REVIEW OF THE SECOND REPORT OF CANADA ON ARTICLES 6-9 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

GENEVA

FEBRUARY 10 AND 13, 1989

REPORT OF THE CANADIAN DELEGATION

92-03588/

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Multiculturalisme et Citoyenneté Canada
Multiculturalism and Citizenship Canada

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REPORT OF THE CANADIAN DELEGATION TO THE REVIEW OF THE SECOND REPORT OF CANADA ON ARTICLES 6-9 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Introduction

Canada's second report on articles 6 to 9 of the International Covenant on Economic, Social and Cultural Rights was reviewed in Geneva on February 10 and 13, 1989, by the Committee on Economic, Social and Cultural Rights, in the presence of a Canadian delegation. This is the report of the Canadian delegation.

Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights was established in 1987 by the Economic and Social Council to review the reports of the States parties to the International Covenant on Economic, Social and Cultural Rights. The Committee is composed of eighteen independent experts, from eighteen different countries, elected by the Council from a list of candidates submitted by the States parties to the Covenant. This committee replaced the group of governmental experts. The Committee meets once a year for a period of three weeks. In 1989, the Committee's session took place from February 6 to 24. A list of the Committee members is attached as Annex 1.

Composition of the Canadian delegation

The Canadian delegation was headed by Ambassador de Montigny Marchand, Canada's permanent representative to the United Nations in Geneva. In addition to Mr. Marchand, the delegation comprised the following persons:

- Lucille Caron, Executive Director, Office of International Affairs, Department of Labour of Canada;
- Marcel Cloutier, Officer, Human Rights and Social Affairs Division, Department of External Affairs;
- Francine Comeau-Godin, Chief Human Rights Officer, Human Rights Commission of Nova Scotia;
- Patrice Lafleur, International Relations Advisor, Department of International Relations of Quebec;
- Martin Low, Senior General Counsel, Human Rights Law Section, Department of Justice of Canada; and
- Langis Sirois, Senior Officer - International Instruments, Human Rights Directorate, Department of the Secretary of State of Canada.

The official representatives on the Continuing Committee of Officials Responsible for Human Rights were consulted on the composition of the Canadian delegation.

Convocation

Canada's report was submitted to the United Nations on June 2, 1987. It was scheduled to be reviewed by the Committee on Economic, Social and Cultural Rights in the 1988 session, but the Committee postponed the review to the 1989 session owing to its heavy workload.

Canada had been informed of the probable dates for the review of its report, but it was not until the start of the first week of the Committee's session that it received confirmation of these dates. This was after the Committee had approved its agenda and timetable, as it does at the start of every session.

Preparations in Canada

The members of the delegation who attended the meeting of the Continuing Committee of Officials Responsible for Human Rights, held in Montreal on January 17 and 18, 1989, met at that time to discuss preparations for the review of the report.

The Department of the Secretary of State of Canada co-ordinated the preparations, in consultation with the other members of the delegation. It invited the official representatives on the Continuing Committee of Officials Responsible for Human Rights to submit suggestions for the content of the opening speech, information on major developments since submission of the report, and data for answering questions that might be raised during the review of the report. In addition to the departments represented on the delegation, a number of federal departments were also invited to provide information, including the Department of Indian and Northern Affairs and the Department of National Health and Welfare.

The draft of the opening remarks was prepared by the Department of the Secretary of State in consultation with the members of the delegation. The draft was sent to the Canadian mission in Geneva the week before the scheduled date of the review of the report.

Consultations also took place in Canada regarding documents submitted to the Committee on Economic, Social and Cultural Rights by the International Labour Organization and by the Four Directions Council, a non-governmental organization accredited to the United Nations. The Department of Labour of Canada undertook to gather the necessary information in the case of the ILO, in consultation with the provinces concerned; the Department of Indian and Northern Affairs undertook to prepare notes regarding the document of the Four Directions Council, which dealt with the situation of aboriginals in Canada, in particular the Micmacs of Nova Scotia. This information was used by the delegation to answer questions asked by members of the Committee.

In order to ensure that the members of the delegation would have material available to assist them in preparing their answers, the Department of the Secretary of State gathered relevant documentation, which was forwarded to the Canadian mission in Geneva by the Department of External Affairs. Each member of the delegation also brought his/her own reference material.

Preparations in Geneva

The review of Canada's report was scheduled for February 10. However, because of uncertainty about that date, the Department of External Affairs asked the delegation members to be in Geneva by February 8.

The delegation met three times (late afternoon of February 8, all day February 9, and morning of February 10) at the Canadian mission in Geneva before the Committee met to review the report. At these meetings, the delegation put the final touches on the opening remarks, assigned tasks and examined the questions submitted in advance by the Committee. Ambassador de Montigny Marchand played an active role in these preparations and in the selection of responses to give to the Committee.

The delegation was able to use a meeting room at the Canadian mission in Geneva, and received the valuable assistance of Anne Assad, the Secretary assigned to the Canadian delegation to the U.N. Commission on Human Rights.

Questions submitted in advance

For the first time in its history, the Committee prepared questions in advance for submission to governments whose reports were under review. These questions were prepared by a pre-sessional working group, which met the week before the session. The document containing these questions (available in English only) is attached as Annex 2.

The questions relating to Canada's report were received in Ottawa in the early afternoon of February 6, by which time the members of the delegation had already left, or were preparing to leave, for Geneva.

The transmittal note implied that these were questions that might, but that would not necessarily, be asked by the members of the Committee. However, at an informal meeting with the Committee Chairman and Secretary on February 8, members of the delegation (Cloutier, Sirois) were told that the list that had been drawn up contained advance questions for the Canadian delegation. These questions would not be raised again in the oral question period, and the Committee wanted the Canadian delegation to reply to these written questions right after the session opened, although it would not insist on this. It gave the delegation the alternative of answering them at a subsequent meeting, at the same time as the oral questions. The Canadian delegation chose the latter option. However, it addressed some of the questions in its opening remarks.

Structure of the report review

The procedure adopted by the Committee called for the following approximate breakdown of the time allotted for the review of each report:

- Opening remarks by the representative of the State party: 15 minutes
- Remarks by Committee members: 90 minutes
- Response of delegation: 75 minutes
- Supplementary dialogue: 15 minutes

The period allotted for the opening remarks could be extended up to forty-five minutes if the delegation chose to start by responding to the written questions; the answer period would be correspondingly shortened.

February 10 meeting

The February 10 meeting was devoted to the Canadian ambassador's opening remarks (20 minutes; see complete text in Annex 3) and to the Committee members' remarks (1 hour 50 minutes). Fourteen Committee members and the ILO representative spoke. The record of the meeting (E/C.12/1989/SR.8) is attached as Annex 4.

The experts' questions and comments related to either the substance or the form of the report.

The substantive questions dealt with, among other things, various aspects of the right to work (minimum wage, hours of work, paid maternity leave, wage disparities between men and women, sexual harassment, compulsory retirement, penalties for infringement of occupational safety and health regulations), extension of the rights enshrined in the Covenant to immigrants and refugees, the situation of the aboriginal peoples, the repercussions of Canada's constitutional structure on the enjoyment of the rights guaranteed by the Covenant, and possible disparities in the enjoyment of rights in the different provinces.

Several of the oral questions were rehashes of written questions. As well, a number of experts repeated questions and comments formulated by those who had spoken before them.

As regards the form, several experts expressed relief that the report was less voluminous than the first one. Some of them described the type of information they would like to see in the reports: case law, analysis of problems and difficulties, analysis of progress made, statistical data. The criticism was made that the report did not contain enough information on how rights are exercised in

practice by the population, in particular disadvantaged groups. They indicated that this type of information would give them a clearer picture of how well the Covenant was being implemented. Committee members appeared to be satisfied with the structure of the report (a section for each government).

Preparation of answers

The delegation met three times (afternoon of February 10, evening of February 12, and morning of February 13) to discuss the preparation of answers. The members of the delegation spent a good part of the weekend drafting replies, and consulted on the draft replies at their meetings on February 12 and 13.

February 13 meeting

At the February 13 meeting, the Ambassador launched the Canadian presentation by a commentary on the remarks made by some members of the Committee. Then the delegation answered the questions formulated by the Committee members. The delegation answered questions for about an hour and a half, using a little more time than allotted, with the Committee's agreement.

Quite a small number of experts (seven) was present when the Canadian delegation began answering the questions. Others arrived later. By the end, there were twelve or thirteen experts present. A short supplementary question-and-answer period followed.

The review of Canada's report ended with the concluding remarks of the Chairman, who thanked the Canadian delegation for having provided very detailed information on varied and complex subjects and for having endeavoured to provide satisfactory answers to most of the questions that had been asked, "thereby demonstrating the willingness of its Government to co-operate actively in the Committee's work." The record of the meeting (document E/C.12/1989\SR.11) is attached as Annex 5.*

Observations of the delegation

The Committee on Economic, Social and Cultural Rights seems to have made a serious effort to improve its methods of work and its review of States parties' reports.

For example, the Committee broke new ground by preparing questions in advance and making them available to the Canadian delegation a few days before the report review.

The delegation also found it useful that the Committee informed it in advance of the time allotted for each stage of the review.

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* See also the abstract of the report of the Committee attached as Annex 6.

Several experts made laudatory comments on the report itself and on the way in which the Covenant is being implemented in Canada. Constructive criticism was provided, along with several useful suggestions.

On a less positive note, the delegation found that, in their review of Canada's second report, most of the Committee members did not seem to take into account the information contained in Canada's first report, despite the fact that the guidelines issued by the Secretary-General for the second report clearly stated that it was not necessary to repeat such information. Only one expert mentioned that he considered Canada's second report to form a whole with the first. The guidelines specified, moreover, that it was not necessary to reproduce in the report information provided in other reports to the UN, including reports submitted to the ILO. Serious efforts had been made in Canada to ensure that the report would not be too long, and one of the ways of achieving this had been to avoid repeating information contained in the first report and in related reports, especially those submitted to this same committee. Paragraph 3 of Canada's report explained this approach.

The delegation members also noted a certain ambivalence in the remarks of Committee members, who want to receive ever more information in increasingly concise reports. It will take imagination on the part of report writers to meet this challenge. However, the Committee members' comments should be helpful in the search for a solution to this dilemma. In fact, the general trend of their remarks seems to indicate that they want the reports to be less legalistic and more informative on how the rights guaranteed by the Covenant are exercised in practice. They would like to see more discussion in the reports on progress made and on the difficulties encountered in implementing the various articles. Also, it would be desirable for the report to contain more statistical data. Finally, the Committee members seem to want more information on the situation of minorities, aboriginal people and the most disadvantaged groups, as regards their enjoyment of their rights under the Covenant.

All these points should be kept in mind when the next reports are prepared for submission to this committee.

Report prepared by Langis Sirois, Human Rights Directorate, Department of the Secretary of State of Canada, in consultation with the other members of the delegation.

ANNEX 1

MEMBERSHIP OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1989 - 1990

Name of member	Country of nationality	Term expires on 31 December
Mr. Philip ALSTON (Rapporteur)	(Australia)	1990
Mr. Juan ALVAREZ VITA	(Peru)	1992
Mr. Ibrahim Ali BADAWI EL SHEIKH (President)	(Egypt)	1990
Mr. Mohamed Lamine FOFANA	(Guinea)	1992
Mr. Sami GLAIEL	(Siryan Arab Republic)	1990
Mr. María de los Angeles JIMENEZ BUTRAGUEÑO	(Spain)	1992
Mr. Samba Cor KONATE	(Senegal)	1992
Mr. Jaime MARCHAN ROMERO	(Ecuador)	1990
Mr. Vassil MRATCHKOV	(Bulgaria)	1992
Mr. Alexandre MUTERAHEJURU	(Rwanda)	1990
Mr. Wladyslaw NENEMAN	(Poland)	1992
Mr. Kenneth Osborne RATTRAY	(Jamaica)	1992
Mr. Bruno SIMMA	(Federal Repubic of Germany)	1990
Mr. Mikis Demetrious SPARSIS	(Cyprus)	1992
Mr. Valeri KOUZNETSOV	(Union of Soviet Socialist Republics)	1990
Ms. Chikako TAYA	(Japan)	1990
Mr. Philippe TEXIER	(France)	1992
Mr. Javier WIMER ZAMBRANO	(Mexico)	1990

ANNEX 2

COMMITTEE ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

Third session
6-24 February 1989

In accordance with paragraph 10 of Economic and Social Council resolution 1988/4, a pre-sessional Working Group of the Committee on Economic, Social and Cultural Rights met from 30 January to 3 February 1989. Its purpose, as decided by the Committee at its second session, was "to identify in advance the questions which might most usefully be discussed with the representatives of States parties. The questions would be transmitted directly by the working group to the Permanent Mission of the State concerned."

Accordingly, on behalf of the Working Group, I am forwarding herewith a list of issues which members of the Working Group have identified as being likely to be raised in connection with the Committee's consideration of the report of Canada on articles 6-9 (document no. E/1984/7/Add.28). The list is not intended to be exhaustive and it should not be interpreted as limiting or in any other way prejudging the type and range of questions which members of the Committee might wish to pose. However, the Working Group believes that the constructive dialogue which the Committee wishes to have with the representative of the State party can be facilitated by making the list available in advance of the Committee's session.

Chairman-Rapporteur of the
Pre-sessional Working Group of the
Committee on Economic, Social
and Cultural Rights

COMMITTEE ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

Third session
6-24 February 1989

List of issues to be taken up in connection with the consideration of the second periodic report of Canada concerning rights covered by articles 6 to 9 of the International Covenant on Economic, Social and Cultural Rights.
(E/1984/7/Add.28)

I. General framework within which the Covenant is implemented

a) Please indicate whether the Federal/Provincial division of powers has led to any significant disparities in the enjoyment of the rights in question by citizens of the different provinces.

b) Are there any possible adverse consequences for the enjoyment of the right to social security and the rights contained in article 7 flowing from the recent entry into force of the Canada-U.S. Free Trade Act?

c) Was any consideration given to the inclusion of economic and social rights in the Canadian Charter of Rights and Freedoms and, if not, why not?

d) Please provide additional information on the measures adopted by the Government, pursuant to its responses to the report entitled "Toward Equality." (para. 12 of the report).

e) Please clarify the meaning of the sentence in para. 6 of the report concerning para. 6(2) (b) of the Canadian Constitution.

II. Right to work (article 6)

a) What are the appropriate steps being taken by the Government to promote realization of the right to work by everyone and to ensure the equal rights of men and women in the enjoyment of this right?

b) How does the Government reconcile the increase in unemployment rates from 6% to 14% with its obligations under article 6 of the Covenant?

c) Please provide information on any integrated national plan for assessment, training and utilisation of human resources, aimed at the rehabilitation of the unemployed in useful and productive employment, and the balancing of supply and demand in the labour market. In particular, why is the unemployment rate so high among women and young people?

d) Please provide additional information on the protection provided for job security, in particular, with regard to compensation for dismissals, re-instatement in the case of unjustifiable dismissals, the role of industrial courts in such matters and promptness of adjudication in relevant cases.

e) How are programmes for vocational guidance and training financed?

III. Right to just and favourable conditions of work (article 7)

a) Right to a fair and equal renumeration

1) Please clarify the methods used in Canada for the determination of salaries and wages

2) Are there any prior consultations with employers and unions before the Government issues minimum wage orders?

b) Right to safe and healthy working conditions

1) Please provide information on any specialized and professional inspectorate responsible for the enforcement of standards relating to safe and healthy working conditions. For example, are there separate labour, technical and medical components in the structure of the inspectorates?

2) Are there benchmarks for safety and health which have been nationally agreed among social partners.

IV. Right to form and join trade unions; right to strike (article 8)

a) Trade Unions rights

Please provide further information on the application of the legal provision according to which unions should not act in a manner that is arbitrary, discriminatory or in bad faith (para. 51 of the report). In particular, does it not vest excessive discretionary power in the Minister of Labour?

b) In this regard, please clarify the compatibility of this provision with the rights set forth in article 9 of the covenant. Have there been any court cases in this matter?

c) Please provide further information on collective bargaining. In particular, is there a balance of power between Unions and employers, and what is the role of the State in collective bargaining?

d) Right to strike

Please comment on the compatibility of the prohibition of strikes in disputes concerning collective agreements with ILO Conventions Nos. 87, 98, and 151.

V. Right to social security (article 9)

a) In view of the high unemployment rate, further information is sought regarding the level of unemployment benefits as compared with wages.

b) What happens when an individuals' entitlement to unemployment benefits is exhausted? Are there any other supplementary income benefits and, if so, for how long?

c) What benefits, if any, are university and high school graduates entitled to in the period before they can find their first employment?

ANNEX 3

REVIEW OF THE SECOND REPORT OF CANADA ON ARTICLES 6-9 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS BY THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Geneva

February 10, 1989

Speech by the Permanent Representative of Canada to the United Nations in Geneva

Ambassador de Montigny Marchand

Mr. Chairman, the members of my delegation whom you introduced are all involved in one way or another in the preparation of reports and in the implementation of international human rights agreements.

Mr. Chairman, we are pleased to be participating in the review by the Committee on Economic, Social and Cultural Rights of the second report submitted by Canada on articles 6-9 of the International Covenant on Economic, Social and Cultural Rights.

Although three Canadian reports have already been reviewed by the bodies set up by the Economic and Social Council, the present report is the first to be reviewed by your committee as established by the Council. Accordingly, we appear before you in a spirit of co-operation.

I would also like to thank the Committee for submitting to us a number of questions in advance of the meeting. I will address some of them now and, as you pointed out, Mr. Chairman, our delegation will respond to the others at a future meeting, if this is agreeable to you.

Mr. Chairman, I would first like to make a few remarks on the constitutional structure of our country and on the process followed in Canada for implementing the Covenants and other treaties relating to human rights and for preparing the reports associated with these instruments.

As you probably know, Canada is a federal state made up of ten provinces and two territories. The powers of the federal government and of the provincial governments are defined by our national constitution. The powers of the two territories are delegated to them through legislation by the Parliament of Canada.

In Canada, responsibility for human rights, including the rights covered by the International Covenant on Economic, Social and Cultural Rights is shared between the different levels of government. So, although only the federal government can ratify international treaties, their implementation with regard to the subject matters that concern us here requires the active participation of the provincial and territorial governments.

That is why, before acceding to the International Human Rights Covenants, the Government of Canada obtained a formal commitment from the provincial governments that they will adopt the necessary measures to implement the provisions relating to matters under their jurisdiction. A 1975 agreement between the federal government and the provincial governments also provides that each government will participate in producing the reports required under the Covenants.

Thus, the provincial and territorial governments, which have direct responsibility for implementing many provisions of the covenant, are required to prepare an account of the measures that they have adopted, and their reports form part of Canada's reports. This approach contributes to the production of well balanced reports.

The consultations required for the implementation of international agreements are carried out at regularly held ministerial conferences, which bring together ministers from each government. The ministers are assisted by a continuing committee of officials. Each government has designated officials responsible for co-ordinating the implementation of treaties and the preparation of the associated reports.

Canada has been following this procedure for more than twelve years. Experience has shown, Mr. Chairman, that this co-operative approach between the various levels of government facilitates the adoption of the measures necessary for full implementation of the treaties to which Canada is a party.

Finally, I would like to add that Canada's reports to the United Nations are widely distributed in Canada in order to familiarize Canadians with the measures adopted and to give them a better understanding of the responsibilities undertaken by our country in acceding to these agreements.

Here is a copy, Mr. Chairman, of the report which you are reviewing today, as printed for distribution in Canada. The text of the Covenant is included in it, and a background note, along with an order form, is used to promote it. Copies of the report, in English and French, have been made available to Members of Parliament, government officials, libraries, publications specializing in the field of human rights, and interested groups and individuals.

These public awareness efforts seem to us to be keeping with your committee's suggestions regarding consultation with concerned non-governmental organizations.

Now, I would like to highlight some aspects of our report on the Covenant's implementation, and to mention a few changes that have occurred since the report was written a few years ago.

In this regard, Mr. Chairman, referring to a remark made to Canada's delegation on the occasion of the review of Canada's first report on articles 6-9, I would like to point out that the statistical data contained in Canada's second report reflect the situation at the moment of the writing of the report. It must, therefore, be understood that the time gap between the preparation of the report and its review by the working group does not permit to present definitive figures, since our society is in constant change.

This is why, Mr. Chairman, I will attempt in my presentation to provide the most recent data on major trends in Canada with regard to the subject matter which concerns us here.

The Committee members will probably have noticed that the report mentions some new developments in Canada, notably the adoption of legislation and programs on employment equity, pay equity, legislative protection against harassment (including sexual harassment), broader protection against discrimination based on disabilities, abolition of mandatory retirement, the adoption of new occupational safety and health measures, and the signing of international social

security agreements with various countries by the Government of Canada and the Government of Quebec.

These developments are continuing. For example, the Province of Ontario has enacted the pay equity legislation which is mentioned in paragraph 332 of the report. Other provinces have also enacted new legislative provisions on equal pay for work of equal value.

New occupational safety and health measures have been adopted - for example, Nova Scotia has enacted new legislation which considerably broadens the protection given to workers.

The report that is now before you discusses unemployment rates in Canada. In preparing the report, we took into account the Committee's comments on our previous report with regard to statistical data. As you will have noticed, this second report, presented in June 1987, contains the most recent data available at the time, that is December 1986, when the rate of unemployment was 9.4%. Since then, the situation has continued to improve, and the unemployment rate was 7.6% in December 1988.

This is the unemployment rate for all of Canada. It is important to note that, despite regional differences, the unemployment rate has continued to decline in all regions. For example, in December 1988, it was 11.6% in New Brunswick compared to 12.5% in December 1987; in Newfoundland, it was 13.3% in December 1988 compared to 18% in December 1987 and in Nova Scotia it was 9.8% in December 1988 compared to 11.2% in December 1987.

The rates of unemployment of both women and young people have steadily declined during the past six years. While in 1983 the rate of unemployment of adult women was 9.6%, it was 7.4% in December 1988. The rate of unemployment of young people was 19.9% in 1983 and 11.9% in December 1988.

Since 1983, the rate of unemployment among adult women is slightly higher than that of adult men probably because mothers with young children work more sporadically, because women in some regions are employed in seasonal industries and because women workers are concentrated in certain sectors (the services sector, for example) which are more severely affected by economic fluctuations.

With regard to youth unemployment, this is a problem that many countries have. In Canada, young people participation in the work force reflects fluctuations between studies, part-time work and seasonal work, for example, during

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	1983	1984	1985	1986	1987
Adult men	9.2	8.9	8.3	7.6	7.0
Adult women	9.6	9.7	9.4	8.6	8.4

the school holidays. Many young people tend to combine work and studies, which necessarily influence the global rate of unemployment of the group.

It goes without saying, Mr. Chairman, that the inclusion of the Canadian Charter of Rights and Freedoms in the Constitution of Canada in 1982, along with the coming into force of its equality rights provisions in 1985, has given considerable impetus to the protection of human rights in Canada. Several statutes have been amended in order to bring them into line with the Charter's provisions, and in many cases the courts have struck down provisions judged inconsistent with the Charter.

Several court decisions have had an impact on matters covered by articles 6 to 9 of the Covenant. For example, with regard to the right to work, which is covered by article 6, the British Columbia Court of Appeal held in Wilson et Medical Services Commission, on August 5, 1988, that the right to liberty guaranteed by section 7 of the Charter may embrace freedom of movement, including the right to choose one's occupation and where to pursue it, subject to reasonable limitations imposed by government.

Further, with regard to article 9 of the Covenant, which deals with social security, there have been a number of Charter challenges of distinctions based on sex, family or marital status and age in the Unemployment Insurance Act, 1971 and in Canada's old age security legislations.

Members of the Committee may also be interested to know that the courts frequently rely on the provisions of the Covenants in interpreting the relevant provisions of the Canadian Charter of Rights and Freedoms and occasionally those of the provincial human rights charters and legislation. For example, in several cases involving freedoms of association, which is guaranteed by section 2(d) of the Charter, the courts have relied on article 8 of the Covenant, which defines trade union rights.

The human rights legislation enacted by the Parliament of Canada and by the legislatures of the provinces and territories have contributed to these developments. The decisions of boards of inquiry or tribunals established by such legislation ensure that the rights of individuals are respected, notably in the area of employment. The federal, provincial and territorial human rights commissions, which administer these laws, along with their boards of inquiry, are constantly confronted with new situations which require them to seek fresh solutions.

These new problems - which Canada, like the rest of the international community, is facing - are also the focus of government attention. Last September, at their fifth federal-provincial-territorial conference, the ministers responsible for human rights looked at the human rights aspects of medical issues and asked the continuing committee of officials to study these questions further, with special emphasis on measures to protect the rights of the individuals concerned. One of the questions to be studied is AIDS detection tests and tests for drug use in the workplace.

At that same conference, the ministers recognized that employment is a priority for disabled persons and requires special attention on the part of government. The federal government and several provincial governments have created special programs to assist disabled persons, as part of the United Nations Decade of Disabled Persons. For example, the New Brunswick government has introduced a program to increase the employment opportunities of disabled persons by emphasizing their abilities rather than their disabilities. In British columbia, the provincial government has just created a committee to advise the Premier on matters of concern to disabled persons, such as access to employment.

Mr. Chairman, I would also like to refer briefly to the free trade agreement recently signed by Canada and the United States. The Canadian Government believes that the agreement, which entered into force on January 1, 1989, will result in an expansion of the Canadian economy and job creation throughout Canada. The agreement does not limit the capacity of the governments in Canada to develop appropriate social programs and protect existing ones. Also, federal and provincial labour laws are not affected by the free trade agreement.

Mr. Chairman, I would like to conclude by assuring you that we are fully aware of the importance of your committee's review of the reports of the states parties to the Covenant.

We will listen with great interest to the Committee's comments on our report, and we will undertake to answer you questions as thoroughly as possible at our next meeting on Monday afternoon.

Geneva, February 10, 1989

UNITED NATIONS

ANNEX 4 *

E

Economic and Social Council

Distr.
GENERAL

E/C.12/1989/SR.8
15 February 1989

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Third session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 10 February 1989, at 10 a.m.

Chairman: Mr. BADAWI EL SHEIKH
later: Mr. SPARSIS

CONTENTS

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (continued)

Canada

Organization of work (continued)

* Changes made by hand show corrections requested by Canada

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.6108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.89-15484/0226B

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS (agenda item 6)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Canada (E/1984/7/Add.28)

1. At the invitation of the Chairman, Mr. de Montigny Marchand and Mr. Low (Canada) took places at the Committee table.

2. Mr. de MONTIGNY MARCHAND, introducing the second periodic report of Canada concerning rights covered by articles 6-9 of the Covenant (E/1984/7/Add.28), said that in Canada, a federal country with 10 provinces and 2 territories, the powers of the central and provincial governments were set out in the Constitution Act; the powers of the 2 territories were delegated to them by the Canadian Parliament. Responsibility for human rights was shared between the different levels of government. It was for the Federal Government to ratify international treaties, whereas they were implemented with the active participation of the provincial and territorial governments. That was why, before acceding to the International Covenants on Human Rights, the Federal Government had obtained a pledge from the provincial and territorial governments that they would adopt the necessary measures to implement the Covenants in the areas of their competence. Under an agreement concluded between the Federal Government and the provincial governments in 1975, each government took part in drawing up the reports required under the Covenants. The provincial and territorial governments had direct responsibility for implementing many provisions of the Covenant and they had to report on the measures they adopted. Their reports were an integral part of the Canadian report. That approach encouraged well-balanced reporting.

3. Ministers from each government met regularly for consultations on the implementation of international agreements. The ministers were assisted in that task by a committee of officials. Each government had designated officials with responsibility for co-ordinating the implementation of treaties and preparing the relevant reports. Experience had shown that that system, which had been in operation for some 12 years, had encouraged the adoption of the measures necessary for full implementation of the treaties to which Canada was party.

4. The Canadian reports to the United Nations were widely circulated in Canada so as to give citizens a better understanding of Canada's responsibilities as a party to international agreements. The report before the Committee had been so circulated, together with the text of the Covenant and an information note and order form. Copies in French and English had been made available to members of Parliament, officials, libraries, specialized human rights publications and interested groups and individuals. Those measures seemed to be in line with the Committee's suggestions concerning consultations with non-governmental organizations.

5. He stressed that the statistics in the Canadian report were valid as at the date the document had been written two years previously. He would therefore try to provide more recent data concerning major trends in the subjects under discussion.

6. The report mentioned new developments in Canada including the adoption of legislation and programmes concerning equality in employment, equality of pay, legislative protection against harassment at work, in particular sexual harassment, the extension of legislative protection against discrimination based on disability, measures to abolish mandatory retirement, the adoption of new measures for safety and health at work, and the conclusion of international social security agreements with different countries by the Government of Canada and the Government of Quebec. Those developments were continuing: for instance, the province of Ontario had adopted the legislation on equal pay for work of equal value mentioned in paragraph 332 of the report. Other provinces had also adopted new legislative provisions concerning equal pay for ~~equal~~ work of equal value. Moreover, further measures concerning safety and health at work had been adopted, for example, in Nova Scotia.

7. The report dealt with unemployment rates in Canada. Account had been taken of the Committee's comments on statistics in its previous report. The Canadian report, which had been submitted in June 1987, contained the most recent data available at that time, which were for December 1986 when the unemployment rate had been 9.4 per cent. Since then the situation had continued to improve and in December 1988 the employment rate had been 7.6 per cent for Canada as a whole. Despite regional differences the unemployment rate had continued to decline in all regions. In December 1988 in New Brunswick it had been 11.6 per cent, compared with 12.5 per cent in December 1987. In Newfoundland the December 1988 rate had been 13.3 per cent, as against 18 per cent in December 1987. In Nova Scotia the rate had been 9.8 per cent in December 1988 compared with 11.2 per cent in December 1987.

8. The rate of unemployment among women and young people had declined steadily over the past six years. In 1983 the unemployment rate for adult women had been 9.6 per cent, whereas in December 1988 it had been 7.4 per cent. The unemployment rate for young people had declined from 19.9 per cent in December 1983 to 11.9 per cent in December 1988. The rate of unemployment among adult women had been slightly higher than that of adult men since 1983, probably because mothers with young children worked more sporadically, because women in some regions were employed in seasonal industries and because women workers were concentrated in certain sectors, including the service industries, which had been more severely affected by economic fluctuations. In Canada many young people tended to work part-time or during the school holidays, which naturally affected the overall statistics for youth unemployment.

9. The inclusion of the Canadian Charter of Rights and Freedoms in Canada's Constitution in 1982 and the entry into force of the provisions on rights to equality in 1985 had given a strong impetus to the protection of human rights in the country. Several laws had been amended to bring them into line with the provisions of the Charter and in many cases the courts had annulled provisions judged contrary to the Charter.

10. Some of the decisions of the Canadian courts had dealt with matters covered by articles 6-9 of the Covenant. For instance, with regard to the right to work, in a recent decision the British Columbia Court of Appeal had ruled that the right to the freedom proclaimed in article 7 of the Charter

could encompass freedom of movement, including the right to choose an occupation and the place where it was exercised, subject to reasonable limits that might be imposed by the State.

11. In connection with article 9 of the Covenant on the right to social security, several cases had been brought before the courts under the Canadian Charter of Rights and Freedoms concerning distinctions based on sex, family status, marital status and age, in connection with the 1971 [redacted] and [redacted] the old age security legislation. Unemployment Insurance Act,

12. The Committee might also be interested to know that the courts frequently referred to the provisions of the Covenants in interpreting the relevant provisions of the Canadian Charter of Rights and Freedoms and occasionally to those of the provincial charters and legislation on human rights. For instance in several cases dealing with freedom of association, as guaranteed under article 2 (d) of the Charter, the courts had referred to article 8 of the Covenant on trade union rights.

13. Legislation on human rights adopted by the Canadian Parliament and the legislative assemblies of the provinces and territories had contributed to those developments. The decisions of the boards of inquiry set up under those laws provided for respect for the rights of individuals concerning, inter alia, employment. The federal, provincial and territorial human rights commissions that administered those laws, and their boards of inquiry, were constantly coping with new situations and having to find new solutions.

14. The governments were also giving attention to those new problems. At their fifth federal-provincial-territorial conference in September 1988, the ministers responsible for human rights had considered questions of a medical nature concerning human rights and requested their committee of officials to study those matters more closely, giving special attention to the measures necessary to protect the human rights of the persons concerned. One of the questions studied would be tests to detect the AIDS virus and the use of drugs at work. continuing

15. At that conference the Ministers had recognized that employment was a priority for disabled persons and required special attention by the governments. The Federal Government and several provincial governments had set up special programmes for disabled persons within the framework of the United Nations Decade of Disabled Persons. The government of New Brunswick had worked out an employment strategy for disabled persons designed to increase their employment possibilities by stressing their aptitudes rather than their deficiencies. In British Columbia the provincial government had just set up a Prime Minister's advisory committee for disabled persons, which would make recommendations inter alia concerning access to employment.

16. The Canadian Government believed that the free trade agreement between Canada and the United States which had entered into force on 1 January 1989 would result in an expansion of the Canadian economy and job creation throughout Canada. The agreement did not limit the capacity of the governments of Canada to develop appropriate social programmes and protect existing ones, nor did it affect federal and provincial labour legislation.

17. His delegation was keenly aware of the importance of the Committee's consideration of reports by States parties and would endeavour to reply to members' questions as fully as possible.

18. Mr. TEXIER said he was gratified by the high quality of the report. It was a matter of satisfaction that Canada had included the content of international treaty provisions in its Constitution.

19. He asked whether any cases had yet been brought before the courts on the basis of the new legislation on sexual harassment.

20. He would also like to know whether any specific measures had been taken in Canada to provide a minimum income for everyone including the long-term unemployed, who tended to become marginalized. The report stated that the unemployment rate was declining but he wondered whether there were any long-term unemployed and any way of reintegrating them into society.

21. He inquired as to the present state of jurisprudence in respect of legislation on safe and healthy working conditions, which were covered by article 7 of the Covenant. Were there severe penalties for infringing such legislation, especially when occupational accidents resulted in death?

22. He wished to know whether the foreigners present in Canada were primarily immigrants and whether they and refugees had the same rights to work, social benefits and so on as Canadians.

23. In connection with article 6 of the Covenant, he had been interested to learn of the legislation on the abolition of mandatory retirement. He asked until what age people normally worked in Canada, whether persons working after the age of 65 received the same pension as those who retired at that age and whether the legislation had had any adverse effects on the unemployment rate.

24. Concerning the equal opportunities legislation, the report seemed to indicate that there were fewer women than men in top jobs in Canada. What was the percentage of senior women civil servants and managers and were any measures envisaged to ensure equality?

25. In connection with the Public Service Act, he asked whether Quebec had any plans for reducing the number of civil servants.

26. With regard to article 7 of the Covenant, he asked whether the legislation on the 44-hour working week was still in force and whether it was intended gradually to reduce hours of work.

27. Mr. WIMER ZAMBRANO commended the Government of Canada on its systematic, accurate and comprehensive report. He invited the Canadian delegation to comment on the Mikmaq case in Nova Scotia.

28. Ms. TAYA asked whether legislation to secure safe and healthy working conditions always had to be enacted at the provincial as well as the federal level and what action the Federal Government could take if the parliament of a province failed to enact the necessary legislation. She also wished to know whether foreign workers were entitled to social security benefits for industrial accidents and whether they could be deported.

29. Mr. ALSTON recalled that in 1988 the Committee had unanimously decided that the names and posts of the members of the delegations of States parties appearing before the Committee should be reflected in the Committee's report. That had not been done because the United Nations Editorial Section had

decided that, since such a practice was not adopted for other committees, it should not be adopted for the Committee on Economic, Social and Cultural Rights. The inappropriateness of the Editorial Section's decision had now been brought home by the Canadian Government's obvious gesture of goodwill in sending such a high-calibre delegation. He gave notice that if the Editorial Section continued to refuse to abide by the Committee's decision, he, as Rapporteur, would object strongly.

30. The report before the Committee was something of an anomaly. It was very thorough and detailed, but it was also superficial and uninformative. If the Committee were to receive from another State party the equivalent of the report presented by New Brunswick, it would reject it. For example, four lines only on the right to strike were not particularly helpful. The shortness of the statements made on nearly every item might be due to the complexity of relations between the Federal, provincial and territorial authorities in Canada, to the degree of sophistication of the legislation and policies in the areas being dealt with, to the seriousness with which human rights were taken in Canada, to the obvious willingness of the Government to co-operate with the Committee, and to the level of public awareness of human rights issues.

31. Under the circumstances it might be appropriate to ask what the purpose of the reporting procedure was in the case of a country like Canada. There were States without the same network of laws or the same opportunities as Canada which could benefit enormously from being prompted by the Committee to reflect on their policies. For them, the preparation of a report to the Committee was obviously a very salutary exercise. However, it was doubtful whether a review of relevant legislation was particularly revealing as far as Canada was concerned. There was so much legislation that writing a few lines on each subject could hardly enlighten the federal or provincial governments as to the extent of their compliance with the Covenant.

32. Another purpose of the reporting procedure was to foster public awareness of the Covenant. The Government of Canada was therefore to be congratulated on its decision to disseminate the report. That, however, was unlikely to arouse much excitement in Canada. The report might have been more widely read if the Government had decided to involve non-governmental organizations and human rights institutions in its preparation.

33. A further function of the reporting system was the education of the Committee itself, the Economic and Social Council, and Governments at large. There were at least two issues on which the Government of Canada could have enlightened the Committee considerably. The first was the "justiciability" of the economic and social rights affirmed in articles 6-9 of the Covenant. The second was the Canadian jurisprudence in respect of some of those rights. It would be useful to single out a few cases in which the actual text of the Covenant or of ILO conventions had been discussed. For example, there had been an interesting case involving the right to strike of public employees in which the court had decided that ILO conventions were not binding on it. In any event it would be useful to know whether the Government of Canada had any observations to make to the Committee on how the reporting procedure could be made more meaningful for Canada, so that the Canadian people could derive some benefit from it.

34. Both the Economic and Social Council and the General Assembly had drawn attention to the need to focus on the situation of the most vulnerable and disadvantaged groups. It would therefore be helpful to have more information on the size of such groups in Canada in respect of each of the rights concerned and on the difficulties that had been encountered in securing those rights for them. The Canadian delegation might also wish to respond to the information contained in document E/C.12/1989/NGO/1, which related to the report of Canada.

35. Mr. MRACHKOV said that he shared some of Mr. Alston's misgivings regarding the nature of Canada's voluminous report, which was written in legalistic terms and did not contain many examples of the practical implementation of articles 6-9 of the Covenant. The disparities between the different sections for different provinces might reflect factual differences or might be due to different approaches to drafting. He endorsed the questions that had been put regarding the rights of Indians in respect of articles 6-9.

36. In his introductory statement the representative of Canada had indicated that unemployment was falling. However, some further information might perhaps be given regarding the measures envisaged by the Government to reduce the still high unemployment rate, especially among women and young people. Some further information on the 1982 National Training Act would also be appreciated, as would some information on the practical implementation of the right to equal remuneration for men and women. Had the large gap between the average remuneration for men and women been reduced? Also, were there any plans to reduce the excessively long maximum working day of 10 hours and maximum working week of 54 hours in the Northwest Territories? In addition, some further information on trends in the membership of trade unions over the past six years would be welcome.

37. Mr. MARCHAN ROMERO expressed his appreciation of Canada's clear intention to comply with its obligations under the Covenant. In its previous report on articles 6-9 of the Covenant, the Canadian Government had indicated that the situation of the Indian minorities was unsatisfactory and that the Government and the ethnic minorities were negotiating amendments to the Indian Act. The Canadian delegation might wish to inform the Committee of the outcome of those negotiations.

38. Mrs. JIMENEZ BUTRAGUEÑO said that Spain, as a country consisting of 17 autonomous regions, could learn a lot from Canada's federal experience. She endorsed some of the constructive criticisms that had been expressed concerning Canada's report, which contained a great deal of information about the law but little about the practical problems encountered. For example, she would like to know what happened when disputes arose between the central Government and a province and whether there was a constitutional court to settle them in the last resort. She was pleased to note the great importance attached to the dissemination of the Covenant, but she wondered what particular action was being taken to disseminate it, by means of the mass media, among the less well educated sections of the population, which were the sections most in need of the rights affirmed in it.

39. Some further information on voluntary retirement would be appreciated. Had it been introduced for economic or for demographic reasons? In Spain, the retirement age had been brought forward, thereby reducing unemployment. Did

voluntary retirement also apply to the public sector? Were there any cases in which the receipt of an old-age pension was compatible with continuance at work? Were any measures being taken to provide special work for elderly persons who could no longer work normally?

40. She wondered why maternity leave was not remunerated in Canada. Some further information on the benefits available to women workers would be appreciated. If the mother died, was the father entitled to leave of absence when his child fell sick? She noted that Canada had not ratified any of the ILO conventions dealing with maternity. She would like to know more about Canada's attitude to international co-operation and its contributions to international funds.

41. Mr. Sparsis took the Chair.

42. Mr. SIMMA said that he concurred with Mr. Alston and Mr. Mrachkov in finding the Canadian report unduly legalistic and lacking in factual substance. When reports focused too narrowly on legal aspects, the suspicion naturally arose that there might be some gap between law and practice, although the Canadian report was less likely to give grounds for such misgivings than the reports of many other countries.

43. The introduction to the report referred in general terms to the issue of unemployment, but he would welcome further information on trends in unemployment among young women and different ethnic groups.

44. He had gained the impression that there was little public participation in Canada in the activities of non-governmental organizations concerned with human rights, and he wondered whether there had been any input from such organizations at the national level in the Canadian report.

45. A further question concerned the Canada Pension Plan. He had been in the United States during autumn 1988, when a major public discussion had been under way on the issue of protecting pension funds from the encroachment of Treasury officials endeavouring to offset the Federal budget deficit. With that consideration in mind, he would be grateful for further information on the way in which pension funds were administered.

46. Finally, it was to be noted that, while the report covered equality of the sexes in relation to equal remuneration and opportunity for promotion, it was silent with regard to the question of equal access to employment in the private sector. In view of the manifold opportunities for indirect discrimination against women in employment, it would be enlightening to learn what steps the Government and the courts had taken to combat such discrimination, an area in which the European Court of Justice had an ample fund of jurisprudence.

47. Mr. ALVAREZ VITA said that he was particularly interested in the question of the status of indigenous populations in Canada. Paragraph 23 of the Canadian report made reference to the Native Economic Development Programme, and he would be grateful for further information on the results achieved by the Programme. There had been criticisms in a report produced by the Four Directions Council (E/CN.4/1989/NGO/1) of the Government's treatment of the Indians. The question of the status of treaties between the Canadian Government and the indigenous populations was pertinent to the Committee's

work in that it was linked to the right of self-determination affirmed in article 1 of the Covenant. It would be useful, in particular, to hear the Canadian Government's view on its dispute with the Mikmaq Indians regarding the administration of their territory.

48. In that connection, it was to be noted that paragraphs 247-251 of the report, introducing the section devoted to Nova Scotia, referred to the Office of the Ombudsman, but made no mention of the Mikmaq Indians. He would be interested to learn whether the Mikmaqs had sought the intervention of the Ombudsman in their case.

49. Mr. NENEMAN said that it would be natural to assume that Canada, with its vast territory, rich natural resources and small population, was a virtual paradise from the point of view of social welfare. That, it would seem from the report, was not the case, although there was no doubt that social policies were highly developed. It was surprising, for example, to find that there was a problem of unemployment, and that joblessness was particularly high among young people and women, not to mention indigenous populations such as the Mikmaq Indians, who had an unemployment rate of up to 48 per cent.

50. Although the Canadian Government claimed that unemployment had declined, States parties were required under article 6 of the Covenant to take appropriate steps to safeguard the right to work, including technical and vocational guidance and training programmes. The report gave very little information on the Government's efforts in that regard.

51. A second area in which the situation was rather surprising was that of expenditure on social security benefits. According to United Nations statistics, Canada channelled 8.6 per cent of its GDP into social welfare, whereas the comparable proportion for Austria was 16 per cent, for Denmark 18.7 per cent, and for the Federal Republic of Germany 18.6 per cent. He wondered why Canadian public expenditure for such purposes was only half that of Western European countries.

52. Mr. FOFANA inquired to what extent the rights set forth in articles 6-9 of the Covenant were extended to foreigners and refugees. He would also welcome information on the degree to which labour in Canada was unionized.

53. Mr. GLAIEL said that, although the Canadian report was substantial, it had been usefully supplemented by the introductory statement. It was still not clear, however, how the laws promulgated by the Government on economic, social and cultural rights were being enforced in practice, and what conflicts, if any, there were between the laws of the various provinces and territories. If such conflicts did exist, were they resolved by the courts?

54. One aspect of social policy that had occasioned some surprise to members of the Committee was that of maternity leave. It was remarkable to discover from paragraph 48 of the report that only one day's paid leave was granted for needs related to the birth of a child.

55. Noting that the term "visible minority" was used in the report, he asked whether that was a specifically legal term and, if so, what it meant. In that connection, it would be useful if the Canadian representative could clarify whether the laws on equal opportunity in work and promotion, and also in social security benefits, applied to minorities.

56. In addition, he would welcome information on the situation of the many immigrants who came to Canada to find work, and on any legislation specifically applying to them.

57. Mr. KONATE observed that Canada had subscribed without reservation to article 1 of the Covenant. In view of the multiracial composition of its population, he was particularly interested in how that article was being implemented in practice. He would like to have more details on the current position of the Mikmaq tribe. He had noted from paragraph 23 of the report that a Native Economic Development Programme had fostered economic self-reliance for native people by providing investment for viable economic projects. He wondered how far the indigenous population had participated in the formulation of that programme and whether it included activities other than the promotion of tourism, which was the industry most generally advocated for native peoples. He was also interested, in connection with article 1, in the federal structure of Canada. It included both provinces and territories and he would like to know what the constitutional differences were between the two. It appeared that the provinces had greater powers and that the territories had varying degrees of independence. It was a number of years since Canada had submitted its initial report, which had included statistics. The current report was mainly concerned with legislation. He would ask the Canadian delegation to submit supplementary statistical information so that the Committee would be better able to gauge the progress which had undoubtedly been made in the meantime in the enjoyment of rights under the Covenant. In conclusion, he observed that working conditions, including hours of work, were most important in the implementation of article 7. He wondered what control the Federal Government exercised in that respect over the country as a whole, since he had observed from paragraph 552 that the maximum hours of work in the Northwest Territories were 10 per day, whereas paragraph 571 stated that in Yukon the standard hours of work "shall not exceed eight hours in a day and 40 hours in a week", which appeared to be more in line with the relevant ILO convention.

58. The CHAIRMAN, speaking in his personal capacity, said that in order to understand the situation in the various provinces and territories of Canada, the Committee needed more than information, a compilation of legislation and statistical data. It required an integrated global picture within a conceptual framework which explained the policy and principles underlying legislative and administrative action and practice. He hoped that in answering the questions on the list of issues, the Canadian delegation would bear that fact in mind. It should also indicate the extent of the progress made by Canada in complying with articles 6-9 of the Covenant and its proposed timetable for achieving the full implementation of those articles.

59. Mr. DAO (International Labour Organisation) reminded members of the Committee that information relating to articles 6-9 of the Covenant as applied by Canada was contained in the ILO reports for 1988 and 1989 (E/1988/6 and E/1989/6). Paragraph 3 of Canada's report to the Committee (E/1984/7/Add.28) contained a list of ILO conventions which had been ratified by Canada. To it should be added the working environment convention which Canada had ratified in June 1988. However, Canada had not yet ratified Convention No. 107 on indigenous peoples or the convention on maternity leave and social security. Turning to the implementation of Conventions Nos. 100 and 111, providing for equality in employment, he said that in 1987 and 1988 the ILO Committee of Experts had noted with satisfaction various measures taken by Canada at the

federal level to give effect to section 15 of the Canadian Charter of Rights and Freedoms. One of those measures was the Employment Equity Act, mentioned in paragraphs 14 and 15 of Canada's second periodic report. A number of countries, including Canada, had also taken administrative measures on the same subject. Canada had ratified Convention No. 122, the Employment Policy Convention; the ILO Committee of Experts had noted with interest that there had been a sustained increase in employment in Canada but that unemployment in certain regions still remained considerably in excess of the national average and above the average for OECD countries. The Committee of Experts had, however, also noted the Canadian programme to assist long-term unemployed, young people, women returning to work, indigenous people and handicapped persons. The Committee had considered the programme to be a positive approach to structural unemployment, which had been developed in co-operation with the representatives of employers and workers. Mr. Konate had mentioned hours of work in Canada. It was the case that Canada had ratified the relevant ILO convention and for some years there had been comments about reducing the normal working hours in some provinces. The main issue with regard to the application of ILO conventions, however, was that of freedom of association and protection of the right to organize. Those questions were regularly examined both by the ILO Committee of Experts and by the Committee on Freedom of Association which had commented on the restrictions on the right to strike embodied in some provincial legislation. With regard to the participation of non-governmental organizations in measures to implement the articles of the Covenant, he reminded members of the Committee that, under article 23 (2) of the ILO Constitution, Governments sent copies of their reports on the application of ILO conventions to national organizations of employers and workers.

60. The CHAIRMAN announced that the first part of the Committee's consideration of Canada's second periodic report on articles 6-9 had been concluded.

ORGANIZATION OF WORK (agenda item 4) (continued)

61. Mr. ALSTON observed that the Committee was taking more time over its work than had been expected. The Secretariat might have to consider a revision of the schedule for the following week.

62. Mr. SIMMA said that if the members of the Committee observed the rules to which they had agreed, they would be able to complete the agenda. For instance, he had noticed that although it had been decided that members of the pre-sessional Working Group should not speak during the question time, most of them had taken the floor that morning.

63. Mrs. JIMENEZ BUTRAGUEÑO wondered whether it would not be desirable to eliminate the second round of questions from members of the Committee. That procedure had proved a waste of time in the case of Cameroon. If the Committee was not satisfied with the answers from the representative of a State party, it could ask for written replies.

64. Mr. MOTERAHEJURU said that he opposed that suggestion. It was his understanding that the list of issues served as a basis for dialogue on general topics, whereas a second round of questions must be allowed for the purpose of eliciting more detailed information.

65. Mr. SIMMA said that, as the Chairman of the pre-sessional Working Group, he was opposed to cutting down the final exchange on the answers which had been provided by the representatives of States parties. The Committee should make the best possible use of the question-and-answer method.

66. The CHAIRMAN said that it would be helpful if speakers observed the time-limits which had been agreed upon.

The meeting rose at 12.40 p.m.

UNITED
NATIONS

ANNEX 5 *

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Economic and Social
Council

Distr.
GENERAL

E/C.12/1989/SR.11
17 March 1989

ENGLISH
Original: FRENCH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Third session

SUMMARY RECORD OF THE 11th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 13 February 1989, at 3 p.m.

Chairman: Mr. BADAWI EL SHEIKH

later: Mr. ALVAREZ VITA

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Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (continued)

Canada (continued)

Rwanda (continued)

* Changes made by hand show corrections requested by Canada

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Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.89-15558/0358B

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS (Agenda item 6)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Canada (E/1984/7/Add.28) (continued)

1. The CHAIRMAN invited the Committee to resume its consideration of the report of Canada (E/1984/7/Add.28) and to give the floor to the Canadian delegation to enable it to provide additional information and to answer the questions raised at the 8th meeting on the understanding that, as there was little other business on the afternoon's programme, it would be permitted to speak for longer than its allocated time.

2. It was so decided.

3. At the invitation of the Chairman, Mr. de Montigny Marchand, Mrs. Caron, Mrs. [redacted]Comeau, Mr. Lafleur and Mr. Low (Canada) took places at the Committee table. - Godin

4. Mr. de MONTIGNY MARCHAND (Canada) thanked the Committee for allowing his delegation additional time to reply to the many interesting questions which it had been asked. Before handing over to his colleagues to answer those questions, he would like to make some general observations. He had been happy to note that, on the whole, the members of the Committee had congratulated Canada on the exhaustive nature of the information provided in the report and its efforts to complete and update the statistics contained in the initial report (E/1978/8/Add.32).

5. However, he had observed that several members of the Committee had criticized Canada for laying too much emphasis on a description of measures adopted and not enough on progress made. In particular, Canada had been criticized for not giving sufficient information on how the courts interpreted and applied the acts and regulations which had been adopted to guarantee the rights enshrined in articles 6-9 of the Covenant. He would not fail to recommend that the Canadian authorities take account of those observations by the Committee when preparing their future reports. Nevertheless, it had to be said in defence of the authors of the present report that most of the rights in question were new and the relevant case law was so recent and inconclusive that its citation might merely exaggerate the extent to which judicial decisions were regarded as precedents (although of course it could be argued that case law was at its most interesting in its early stages). In some sectors, for example, there were no precedents at all and, as yet, no tangible result which could be used to assess the impact of the programmes, acts and regulations adopted.

6. He proposed that the Committee should listen to Mrs. Caron, Mrs. [redacted]Comeau, Mr. Lafleur and Mr. Low, in that order, and hoped that their replies would fully meet the Committee's expectations. - Godin

7. Mrs. CARON (Canada) said she wished to begin by replying to the written question on the steps taken by the Canadian Government to promote the realization of the right to work by everyone and to ensure the equal rights of

men and women in the enjoyment of that right. The second report of Canada (E/1984/7/Add.28) already provided considerable information on the measures enacted by both the federal Government and the provinces to achieve and sustain the economic conditions which were the necessary basis for full realization of the right freely to choose employment. The members of the Committee would also find detailed information on the relevant macro- and micro-economic and structural policies, in the report submitted by Canada to the ILO under the ILO Employment Policy Convention which covered the period 1 July 1986 to 30 June 1988 inclusive. Although, as Mr. de Montigny Marchand had just said, it was difficult to assess the results of all those measures and policies, partly because they were recent and partly because the economic climate of a country was always also dependent on external factors, it could none the less be pointed out that the unemployment rate had fallen steadily in recent years, while the number of jobs created had continued to increase. With regard to employment policy, the federal Government, after consultations with the provinces and with business and trade unions, had adopted the Canadian Job Strategy in 1985, which comprised six major programmes intended to help workers adjust to changing technology and markets, to facilitate entry into the labour market for specific groups, to assist the long-term unemployed to enhance their employability through training and work experience, to support the training of individuals in specialized areas of current or potential occupational skill shortages, to assist selected communities in the assessment of their economic problems and the development of employment opportunities and to promote, test and develop innovative approaches to labour market changes. In 1987-1988, the budget allocated to that Job Strategy had been $1.5 billion and the figure for 1988-1989 was $1.6 billion.

8. With respect to equality of rights between men and women workers, the legislation throughout Canada prohibited discrimination in employment and working conditions on grounds of sex. In addition, all 13 Canadian territories had adopted various measures to secure the acceptance and observance of the principle of equality of treatment in employment. The federal Employment Equity Act, which had come into force in August 1986, required employers to strive to achieve a representative workforce (women, aboriginals, visible minorities and disabled persons) by eliminating systematic employment barriers (or indirect discrimination) and by adopting positive action programmes. Similar initiatives had been taken at the provincial level.

9. With regard to measures taken to ensure job security, particularly penalties for unfair dismissal, nation-wide legislation on employment standards stipulated that an employer who dismissed an employee (other than on disciplinary grounds) must give him reasonable notice or pay him compensation equivalent to the salary which he would have received if he had worked for that period. The period of notice varied according to the experience, training and length of service of the employee. In general, those provisions applied to workers who had been employed for at least three months. Under most legislation, notice was not required for employees hired for a fixed term, made temporarily redundant or dismissed for a just cause, employees who had refused reasonable alternative employment or those employed under a contract that had become impossible to perform as a result of external factors. The law also provided for a speedy and inexpensive appeal to be made by the employee against his employer, normally empowering employment standards officers to investigate such claims and attempt to reach an amicable settlement. Failing such a resolution, the Employment Standards Office could issue a certificate of unpaid wages, which was legally enforceable. Those

laws also made it illegal to dismiss employees on grounds contrary to human rights legislation, because of pregnancy, trade union activities, participation in legal proceedings under employment standards or industrial relations legislation or for garnishment of wages. As well as those instances of illegal dismissal, the federal Labour Code and those of Nova Scotia and Quebec defined cases of "unfair dismissal". That was a new concept as it established not merely the right to adequate notice or compensation for dismissal, but a genuine right to employment. Accordingly, in such cases, the employee must have a longer period of service (1-10 years depending on the codes).

10. With reference to the methods used to determine salaries, she specified that the law guaranteed a minimum wage, which was periodically reviewed and increased by decree. The minimum wage, which mainly protected non-union and unskilled workers, represented a basic wage-level which employees or their trade unions could negotiate with employers to increase. The minimum wage could vary according to age or categories of employees, but it applied equally to men and women. In addition, all 13 territories had enacted legislation to guarantee equal pay for equal work, equal pay for work of equal value or equity in remuneration. All those laws prohibited discrimination between men and women and prohibited employers from reducing the salary of a male or female worker in order to comply with the legislation. However, the three categories of legislation were based on slightly different concepts. Those stipulating equal pay for equal work prohibited an employer from differentiating in the wages paid to men and women employees performing the same or similar work under the same or similar conditions and whose jobs required the same or similar skills, effort or responsibility.

11. The concept of work of equal value, however, involved complex criteria which took into account the skills, effort and responsibility required in the performance of the work as well as the working conditions. It called for the application of modern job evaluation techniques to permit comparisons between jobs which initially seemed very different. Pay equity aimed at eliminating systematic (or indirect) discrimination in female dominated employment categories, by prohibiting employers from paying different salaries to employees in male-dominated and female-dominated employment categories where the work performed was of equal or comparable value (the assessment criteria being as already mentioned). In such a case, the employer was obliged to attempt to reach agreement with the trade union concerned on a "gender-neutral" job evaluation plan, i.e. one not taking account of sex. If the parties failed to reach an agreement, the matter was referred to a board.

12. One of the written questions asked whether there were consultations between employers and unions prior to the adoption of decrees establishing the minimum wage. She confirmed that to be the case.

13. There had been a written question on working conditions, asking whether there were separate labour, technical and medical components in occupational safety and health inspectorates. As a general rule, occupational safety and health inspectorates included doctors, engineers and specially trained industrial hygiene technicians. Regarding the participation of unions, the trend throughout the country was to promote employer-employee co-operation at the work place by the establishment of joint safety and health committees. There were also regular formal or informal consultations between trade unions and employers on occupational safety and health issues.

14. Another written question asked whether there were any safety or health criteria which had been jointly agreed by trade unions and employers and were applied throughout the country. The most recent and notable example was the WHIMS system, which was intended to establish uniform criteria to guarantee that the suppliers of hazardous material produced, imported and used within work places in Canada employed the same standards to define the nature of the hazard and inform the employers and employees concerned. That system had been established in 1987, after almost four years of intensive consultations involving the federal, provincial and territorial governments, as well as representatives from the chemical industry and trade unions. Working groups established throughout that consultation process had made various recommendations, on such issues as the classification of hazardous materials, worker education programmes, the balance between the workers' right to know and industry's right to protect trade secrets, etc.

15. Mr. Texier had asked what were the penalties for infringements of occupational safety and health regulations. As an example, fines at the federal level were as high as $100,000 for serious infringements. In Ontario, a recent bill proposed a maximum fine of $500,000. Those fines could be accompanied by prison sentences whose length depended on the nature, consequences and circumstances of the offence. There had been few cases of such offences, as they were usually settled by the governmental occupational health and safety services, rather than by the courts. However, Canada would endeavour to describe some of those cases in its subsequent report.
Mr. Mrachkov had inquired as to the current difference between the earnings of men and women. In 1987, the earnings of women workers had been 65.9 per cent of those of male workers (full-time), as opposed to 58.4 per cent 10 years previously. That gap was due to the traditional concentration of women in low-paid jobs with few opportunities for advancement, as well as the fact that most occupations with large numbers of women workers were non-unionized and generally were less well remunerated and offered fewer social benefits than others. In order to reduce those wage gaps, in addition to the previously mentioned laws on equality of remuneration there was a whole series of programmes intended to reduce the concentration of women in lower-paid jobs. At the federal level and in each province, there were various programmes to promote equal employment opportunities and treatment and to encourage girls to pursue careers in less traditional occupations. There were also federal and provincial programmes to establish a more equitable representation of the traditionally underprivileged groups of the economically active population, such as women, indigenous groups and disabled persons. A recent federal act on equality in employment obliged companies with more than 100 employees to establish objectives in line with that aim and to submit an annual report on progress made.

16. Replying to a question from Mr. Fofana and Mr. Mrachkov, she specified that the rate of trade-union membership, which had peaked (40 per cent) in 1983, had been 37.6 per cent in 1987. That should not be seen as a sign of disaffection towards the trade-union movement, but simply as the result of the rapid increase in new jobs since 1983. Women workers represented 36.4 per cent of trade-union members and, since 1980, their percentage had increased by almost six times as much as that of men.

17. Mrs. Jimenez Butragueño and Mr. Glaiel had expressed concern about the apparent absence of paid maternity leave in Canada. As had been stated in Canada's initial report, and as was also stated in paragraphs 208, 410 and 470

of the report under consideration, the federal Government's unemployment insurance programme, which operated throughout the country, provided 15 weeks' maternity leave. That leave could be taken for the birth or adoption of a child (in the case of an adoption, the leave could be taken by either the mother or the father). If the mother died or could not look after her child for health reasons, the father could claim paternity leave. Additional maternity leave could be granted by collective agreements or provincial programmes. In addition, throughout the country, the law prohibited an employer from dismissing an employee on maternity leave, and stipulated that the employee must return to her own or a comparable job, after maternity leave.

18. Mr. Texier, Mr. Glaiel, Mr. Fofana and Ms. Taya had been concerned about the application of articles 6-9 to immigrants and refugees. It could be pointed out that legal immigrants or permanent residents had the right to the same treatment as Canadian citizens, including the benefit of the laws on compensation of employees. Recognized refugees, or those who had requested that status, were treated as permanent residents.

19. In reply to Mr. Konate and Mr. Mrachkov, who had been concerned about working hours in the Northwest Territories, she said that a distinction must be drawn between normal working hours (an average of 8 hours per day and between 40 and 48 hours per week depending on the province) and maximum working hours, as established by law in some provinces. An employee who worked beyond normal working hours (up to the legal maximum) was paid overtime. In the Northwest Territories, maximum working hours were 10 hours per day and 54 hours per week, which reflected the wishes of both workers and employers. A great deal of heavy work was done in the long summer days, in isolated areas where the workers usually lived in camps and preferred longer working days so that they were paid overtime and could spend less time away from their families.

20. She supplemented the information on unemployment rates given by Mr. de Montigny Marchand at a previous meeting by saying that the unemployment rate among women was not significantly higher than the rate among men and that, since 1986, Canada had had the highest economic growth rate and job creation rate of all the major OECD countries.

21. A written question had asked whether the legal requirement that trade unions should not act in a manner that was arbitrary, discriminatory or in bad faith gave excessive discretionary power to the Minister of Labour. She denied that suggestion. The obligation of equitable representation applied solely to the rights of the employees covered by the collective agreement. In other words, the trade union, in an equitable and non-discriminatory fashion, must represent all the employees in the negotiating group for which it was responsible. That provision made it possible to reconcile both the individual rights of employees and the rights of the trade union. Complaints arising out of that provision were considered by the Canada Labour Relations Board, an independent body made up of trade-union and employers' representatives. It was therefore clear that the provision on equitable representation was fully consistent with the rights enshrined in article 8 of the Covenant. With regard to the balance between the power of the unions and that of the employees and the role of the State in collective bargaining, she said that, by definition, collective bargaining was intended to establish a fair balance between employers and employees. The laws governing collective bargaining in Canada sought to support the efforts made by trade unions and employers to

maintain constructive relations and to prevent either side from resorting to "unfair practices" such as rotating strikes or lock-outs. The Minister of Labour was competent to appoint conciliators and mediators to help employers and trade unions to conclude or renew collective agreements.

22. With regard to the compatibility of the provisions on strikes with ILO Conventions Nos. 87, 98 and 151, she indicated that the right to strike was upheld by labour legislation. However, it was restricted in the essential services or in sectors where a strike might provoke a serious national crisis endangering all or part of the population; those limitations were in accordance with the ILO principles and conventions on freedom of association. The federal Parliament and provincial legislative assemblies had adopted some legislation compelling workers to return to work when all attempts at conciliation and mediation had failed and continuation of the strike might seriously damage the public interest. Canadian trade unions had occasionally complained to ILO, alleging that ILO principles or conventions on freedom of association had been violated. Some complaints had been judged to be unfounded. In other cases, the ILO Committee on Freedom of Association or Committee of Experts had made suggestions and recommendations. Canada had always co-operated with the ILO monitoring bodies by providing all the information required in good time and the Canadian Government had ensured that the ILO conclusions on complaints concerning the provinces were promptly transmitted to them for consideration.

23. Mrs. [redacted]COMEAU (Canada) said that the federal Government and the Governments of the provinces and territories had adopted legislative measures prohibiting sexual harassment and establishing human rights commissions responsible for receiving complaints of such harassment and conducting investigations into the allegations. Several hundred of the thousands of complaints submitted had been brought before the courts. Legal precedents had been established which made it clear that sexual harassment at the workplace would not be tolerated. In addition, the Supreme Court of Canada had ruled that employers were indirectly responsible for any sexual harassment on their premises. It was therefore incumbent upon them to take steps to deter and prevent such harassment and to provide information about offences and possible prosecutions. Public and private sector employers and trade unions were also endeavouring to eliminate sexual harassment. Many of them had established their own systems of investigation, making it clear that offenders ran the risk of dismissal. That positive attitude had encouraged women to report instances of harassment without delay, which had often led to speedy settlement of the problems and enabled women to keep their jobs. The civil courts had supported employers who had dismissed an aggressor. Despite that, educating the general public was a long-term process and people were not always fully aware of their rights. However, in Nova Scotia for example, the number of complaints had fallen over the past three years thanks to the readiness of employers to resolve problems promptly.

24. With regard to the right to social security, she said that unemployment benefit represented 60 per cent of the average salary received during the period of employment, up to a maximum of $363 per week. Benefit was paid for a maximum period of one year, after which, if the recipient was still unemployed, he could claim assistance from either the province or district for an unlimited period. Graduates from secondary and higher education establishments could also claim assistance from their local council when seeking their first job, if they could prove that they had no income.

25. Mr. LAFLEUR (Canada), in reply to the question on the existence of training programmes to reintegrate the unemployed and assign them to useful and productive jobs (question II (c)), said that there was an employment planning strategy in Canada as well as individual programmes in each province. The law establishing a national vocational training programme, adopted on 7 July 1982, constituted the legislative basis for agreements between the federal Government and the provinces to ensure implementation of the employment planning strategy and the financing of training programmes. Introduced in September 1985 by the federal Government, after consultation with the provincial governments, business circles and workers' representatives, the strategy contained a series of programmes to integrate the unemployed in the labour market. Those initiatives related to the groups with the highest unemployment levels, such as women, indigenous populations, disabled persons and visible minorities. More than 285 projects had been undertaken in 1987-1988.

26. In general terms, since the economic recession of 1982-1984, priority had been given to the long-term unemployed. Some measures enabled workers who had lost their jobs, to be trained for new occupations with the help of their employers. In other cases, efforts were made to fill vacant posts in the sectors of the economy where there were labour shortages. A workers' relocation programme was intended to offset factory closures. In addition, special programmes had been established to facilitate the entry of young people to the labour market and to help women return to the labour market after some years' absence. Subsidies were also given to young people to help them establish small businesses. The cost of those programmes was negotiated between the provincial governments and the federal Government, which was responsible for overall financing. The federal Government had allocated funds of the order of $1.5 billion to set up those programmes in 1987-1988, and the provinces also allocated funds to establish their own programmes. As an example, the members of the Committee would find in appendix II of the Quebec section of the report, a list and description of the principal measures encouraging adult occupational training established by Quebec.

27. In reply to Mr. Texier's questions, he explained that the staff reduction policy in the Quebec civil service reflected a trend towards rationalization to increase efficiency which many other countries and organizations throughout the world had also considered necessary. The Government of Quebec believed that it was justified in withdrawing from some sectors and handing over responsibility to private enterprise. Several State-owned companies had therefore been privatized, while some bodies within the civil service had been restructured. The Government of Quebec had implemented a policy of natural wastage and had taken steps to promote voluntary redundancies, including financial compensation, help towards reintegration in the private sector and early retirement incentives.

28. There were no current plans to alter the length of the normal working week, established at 44 hours by article 52 of the Employment Standards Act.

29. The Quebec Human Rights Commission was competent to receive complaints of sexual harassment and to conduct investigations in accordance with the Charter of Human Rights and Freedoms. He invited the members of the Committee to refer to the second periodic report submitted by Canada in January 1988 under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/13/Add.11, paras. 448-535) if they wished further details, particularly on sexual harassment cases in Quebec.

30. The Act of 1 April 1982 abolishing compulsory retirement did not in any way restrict abolition of the compulsory retirement age but merely stipulated that the employee could not continue to contribute to the Pension Plan after the age of 70. The employee could continue to work after the age of 65 without the amount of his future pension being in any way reduced. That measure had absolutely no effect on the salary of persons who wished to continue their career late in life.

31. Referring to paragraphs 64 and 484 of Canada's report, relating to the conclusion of bilateral social security agreements by the Canadian and Quebec Governments, he said that such an approach was in line with the request sent to its members by the International Labour Organisation about 15 years previously. ILO was trying to encourage its members to reach such agreements in order to eliminate obstacles to worker mobility and to ensure greater justice in their social security treatment. At the multilateral level, the Canadian authorities were fully aware of the provisions of the ILO Convention on Migrant Workers, even though it had not yet been discussed by the governments of the various Canadian territories, as priority was given to the conclusion of bilateral agreements.

32. Mr. LOW (Canada), referring to the first written question on the division of powers between the federal and provincial governments, said that they must obviously work together in the areas covered by the Covenant in order to fulfil all the obligations contracted and to ensure the full enjoyment by Canadians of the rights enshrined in that instrument. The federal system did not create significant disparities in terms of respect for those rights. However, it was a complex question and the possible answers to it depended on the particular right being considered. For some of the rights guaranteed by articles 6-9 of the Covenant, federal legislation ensured uniform treatment throughout Canadian territory. The pensions paid under the Canadian Pension Plan were standardized and payable wherever a person chose to reside in Canada. In other cases, provincial programmes to protect a certain right were largely financed by federal funding to ensure that all provinces were in a position to provide the protection required. For example, under the Canadian Assistance Plan, the federal Government assisted the provinces, in certain circumstances to fund welfare programmes. Under part III of the Constitution Act 1982, entitled "Equalization and regional disparities", the federal and provincial governments undertook to promote equal opportunity for all Canadians in the pursuit of their well-being to further economic development in order to reduce inequality of opportunity, and to provide all Canadians with essential public services of reasonable quality (para. 1 of article 36). The same provision committed the Parliament and Government of Canada to the principle of making equalization payments to ensure that provincial governments had sufficient income to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. Article 6 of the Canadian Charter of Rights and Freedoms which guaranteed freedom of movement and residence also related to article 6 of the Covenant on the right to work. With regard to other rights, such as those guaranteed by article 7 of the Covenant, where funding was less important, the different governments operated relatively independently in adopting legislative and administrative measures to meet the specific economic and social requirements of the region. However, the provinces usually adopted similar provisions, as was illustrated by the 13 Human Rights Codes, which all guaranteed the right not to be discriminated against in the workplace.

33. Furthermore, several mechanisms existed to ensure that the provinces and territories were aware of the approaches taken in various parts of Canada towards human rights issues and co-ordinated their activities. Ministerial Human Rights Conferences attended by the federal, provincial and territorial authorities, were held at approximately two-year intervals and a committee made up of the authorities responsible for human rights at federal, provincial and territorial levels met twice a year to co-ordinate governmental action on a national scale. At the most recent Ministerial Conference in September 1988, the ministers had considered several issues of relevance to articles 6-9 of the Covenant, namely access of disabled persons to the workplace and testing of employees for drugs and AIDS. Those consultations and joint activities made a major contribution to minimizing any differences which might exist between the regions and encouraging a harmonized approach to implementation of the Covenant.

34. Referring to the questions raised by Ms. Taya and Mrs. Jimenez Butraqueño on the division of powers under the Canadian Constitution, he said that the Canadian constitutional provisions concerning implementation of many of Canada's international commitments were probably among the most complex in the world. Ratification of an international treaty did not affect the distribution of legislative power to implement that treaty. In the implementation of the Covenant, the federal and provincial governments had exclusive legislative powers which sometimes overlapped and which had to be exercised at both federal and provincial levels. For that reason, prior to ratification of the Covenant, the different governments had been required to agree to take the necessary legislative measures. If there were the slightest doubt about application of the Covenant, at any level whatsoever, the periodic meetings of the ministers responsible for human rights would provide a forum for resolving the problem.

35. The courts were competent to resolve disputes between the federal and provincial governments. Questions of a constitutional nature could be brought before the courts by private parties in litigation among themselves or against a government, or by a government suing another government. The federal Government could also ask the courts to issue an advisory ruling on questions of a constitutional nature, as had occurred with regard to wages and price controls in the mid-1970s. That mechanism made it possible to settle differences between the federal and provincial authorities.

36. With regard to the question raised by Mr. Konate about the apparent difference in status between the provinces and the Yukon and Northwest Territories, he said that the difference was due to the fact that the powers and responsibilities of the provinces were set out in the Canadian Constitution. Each province had its own constitution which could only be altered in accordance with constitutional procedures, while the Constitutions of the Yukon and North west Territories were set out in two federal statutes. Despite that, those territories enjoyed many of the same legislative and executive powers as the provinces. Theoretically, the federal Parliament had the legal authority to alter the two statutes containing their constitutions but, in political terms, it would be very difficult for it to make any amendments to which the territorial governments were opposed. The federal Government was therefore most unlikely to intervene on a matter which it had left to the Territories to resolve, such as working hours.

37. It was clear that some economic and social rights were included in the Canadian Charter of Rights and Freedoms. For example, the right to work in the place of one's choice (article 7 of the Charter) and freedom of association (article 2, para. (d) of the Charter). On the basis of article 15 of the Charter, guaranteeing rights to equality, the courts had ruled that natural parents should enjoy the same benefits as adoptive parents. Proposals to add explicit reference to a broader range of economic and social rights had been made to the Committee which had drafted the Charter, but Members of Parliament had considered that it would be preferable to allow complex questions of economic and social policy to be resolved by the legislative institutions which could thereby develop solutions adapted to the constantly evolving economic and social conditions. Apart from the Canadian Charter, several provincial laws, including the Quebec Charter of Human Rights and Freedoms and the Saskatchewan Human Rights Code, expressly guaranteed several economic and social rights. For example, article 45 of the Quebec Charter confirmed the rights of needy persons to financial and social assistance so as to provide them with an adequate standard of living. Article 46 of that Charter reiterated the right to just and reasonable conditions of work. The Saskatchewan Code enshrined the right to engage in any activity or enterprise and prohibited discrimination in employment or by a trade union. While those were not constitutional laws, they did enjoy primacy over any other provincial laws which might be inconsistent with those rights.

38. The federal Government had launched several major initiatives to give effect to its policy of promoting equality. Various measures had been taken concerning the employment of women in combat roles in the Canadian armed forces, the availability of welfare benefits to part-time workers and the mandatory retirement age. As part of its policy to promote equality, the federal Government had committed itself to expanding the role of women in the Canadian armed forces. All restrictions on recruiting women and employing them in the air force had been gradually abolished. The navy and army were studying various aspects of the issue with a view to doing likewise.

39. The Government had also improved the availability of benefits for part-time workers, whether pensions, paid holidays or other benefits.

40. In reply to a written question (1 (e)), he said that it was clear from paragraph 2 of section 6 of the Canadian Charter of Rights and Freedoms, which enshrined the right to mobility, that every Canadian citizen or permanent resident was free to seek employment or other gainful occupation anywhere in Canada, subject to the provisions of paragraph 4 of that article. Those provisions enabled a province to establish preferential employment programmes in favour of provincial residents if the rate of employment in that province was below the national average.

41. Mr. Texier and Mrs. Jimenez Butragueño had raised questions about the mandatory retirement age and developments in Canadian policy in that area. There were clearly important issues of social policy to be resolved, as society aged, and the Committee was undoubtedly aware of all aspects of the problem. In Canada, however, it was not merely a question of social policy. Mandatory retirement at a fixed age might be contested in court under section 15 of the Canadian Charter of Rights and Freedoms, which prohibited discrimination on the basis of age. Two cases contesting mandatory retirement at a fixed age for doctors and university lecturers were currently pending in the Supreme Court. Furthermore, in 1986, an ad hoc judge aged 83 had ruled in

favour of a Frederal Court judge who was contesting mandatory retirement at 70. The federal Government had not appealed against that decision as it was determined to abolish the provisions establishing a fixed retirement age in the employment sectors governed by federal law. Its attitude was based on a detailed study undertaken by a Senate Committee and a Special Parliamentary Committee on Equality Rights, which had recommended abolition of a legal retirement age, and on the experience of Quebec where mandatory retirement had been abolished in 1982 with, as had been shown in 1986, no serious adverse effects on employment, since most workers continued to retire at the usual age. Accordingly, mandatory retirement had been abolished in the federal civil service in 1986. The Government was committed to amending the Canadian Human Rights Act so that complaints of age discrimination in employment would fall within the jurisdiction of the Canadian Human Rights Commission. Two factors must be taken into account. Firstly, some employers would be obliged to prove that a job's requirements were such that retirement at a fixed age was justifiable. Secondly, Parliament would be asked to take the necessary steps to review the new law's operation within a few years in order to introduce any amendments required.

42. Mr. Alston had asked whether it was possible to enforce the economic and social rights recognized by the Covenant in the Canadian courts. In Canada, as in Australia and the United Kingdom, international treaties did not automatically have force of law but had to be implemented by domestic legislation. Hence, Canada's reports to the Committee were intended to inform the Committee of such measures. However, Canadian courts had recently begun to refer to international treaties and practices under those treaties in interpreting the Canadian Charter of Rights and Freedoms. A recent decision taken by the Supreme Court of Canada relating to some trade-union rights was clearly inspired by the Covenant.

43. In reply to Mr. Simma's question on the indirect discrimination resulting from application of a seemingly neutral policy, described within Canada as systemic, unintentional or constructive discrimination, he pointed out that the various Human Rights Codes in force throughout Canada protected citizens against that form of discrimination. At the federal level, the Supreme Court had recognized that systemic discrimination was covered by the Canadian Human Rights Act and in January 1989, in a case on failure to respect the right to equality enshrined in section 15 of the Canadian Charter of Rights and Freedoms, it had explicitly confirmed that protection of the right to equality, guaranteed by the Constitution, encompassed protection against all forms of systemic or indirect discrimination.

44. Concerning the role of non-governmental organizations in the preparation of Canada's reports, about which Mr. Simma had asked for details, he stated that those documents were drafted by the country's 13 governments. While those governments did not usually involve NGOs in the drafting process as such, the completed reports were distributed to Canadian NGOs well in advance of submission to the Committee, which enabled them to make representations to both the governments concerned and the Committee. The Canadian Government believed that that process made it possible to undertake a constructive review of the measures taken by Canada to apply the Covenant and contributed to dialogue between the Committee and NGOs.

45. In reply to Mr. Simma's question on the contributions paid by employees and employers to the Canada Pension Plan, he explained that those contributions were paid into a special account and so were not confused with public revenues.

46. Several members of the Committee had raised questions relating to Canada's aboriginal peoples who were defined by article 35 (2) of the 1982 Constitution Act as comprising the Indians, Inuits and Metis.

47. First and foremost, it was important to realize that the question was a very complex one because in social, economic, cultural, geographical, political and in short human terms, Canada's aboriginal peoples lived in very different situations. Care must be taken to avoid oversimplification and stereotyped ideas.

48. Canada contained more than 590 tribes of Indians alone, whose languages and cultures differed considerably. Some Indians had an entirely adequate standard of living and a few were even rich, whereas others lived at subsistence level. In more general terms, too many aboriginals lived in deplorable economic and social conditions. Furthermore, while some lived in separate, relatively self-contained communities, others, like many Micmacs, were integrated into the multiracial Canadian society.

49. As Canadian citizens, the aboriginals possessed all the rights and duties attaching to that status. They had the right to vote and to seek to improve their lot by democratic means. The Canadian Government was also endeavouring to meet their requirements and aspirations in a constructive, equitable and effective manner by making the necessary changes.

50. With regard to the amendments to the legislation relating to Indians, about which Mr. Marchan Romero had requested further details, he pointed out that the legislation had been extensively modified since the submission of Canada's previous report on articles 6-9 of the Covenant. In 1985, Parliament had amended the Indian Act, ensuring inter alia that Indian women would no longer lose their status as Indians on marrying a non-Indian - which complied with section 15 of the Canadian Charter of Rights and Freedoms and was in line with the decision taken by the United Nations Human Rights Committee in the Lovelace case - as well as enhancing the authority of Indian tribal governments.

51. Among the many legal texts intended to increase the tribes' authority over their lands, note could be taken of the 1984 Cree Naskapi (of Quebec) Act and the 1986 Sechelt Indian Self Government Act, which defined the structure and jurisdiction of the tribal governmental organ, gave a precise legal status to tribal councils and increased their authority to deal with cases concerning land, membership and the tribe's socio-cultural and economic problems. That legislation was indicative of the willingness of the Canadian Government to make further arrangements for broader self-government in Indian tribes.

52. On the questions which had been raised concerning self-determination, he wished to make the following observations. In a democratic country like Canada, self-determination was a right recognized as belonging to the people as a whole. However, the Canadian Government considered that the concept of self-determination could not be construed as authorizing any activities liable to impair the territorial integrity, political unity or coherence of a

sovereign and independent State such as Canada. As self-determination implied geographical separation and total political and economic autonomy, it was not a viable concept in attempts to find practical solutions to Canada's real problems. Canada was also confident that its relevant international obligations had been met and would continue to do its utmost to bring about further progress, taking account of the diverse circumstances within the country.

53. A number of questions had been asked about self-determination for the Micmac people in Nova Scotia. The Committee was undoubtedly aware that several communications alleging violations of the right of various groups of Micmacs to self-determination had been sent to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights. Without wishing to go into those cases in detail, which would be inappropriate as one of them, concerning the Micmac Tribal Society was still pending in the Human Rights Committee, he wished to make certain points.

54. In Quebec and the Atlantic region, the Canadian Government had set aside approximately 19,000 hectares of land for some 14,000 Micmacs. In accordance with the Indian Act, the Micmacs living in those reserves enjoyed some degree of self-government. In addition, the Government's policy was to negotiate with the communities to establish legislative arrangements to enhance their autonomy.

55. The Canadian Government would continue the process which it had begun in order to resolve the problems faced by the Indians, including the Micmacs, and to increase their role in administering their own affairs and reserves.

56. Mr. Neneman had referred to a figure in the written statement submitted by the Four Directions Council according to which unemployment among Micmacs in 1981 had been 48.6 per cent. Admittedly, the employment situation among the Micmacs was unsatisfactory, but such a bare figure, which might relate only to those living in the reserves or to all Indians in the province, did not provide an adequate description of a complex reality or of the measures which had been taken to end the Indians' economic dependence.

57. In reply to the questions raised by Mr. Alvarez Vita and Mr. Konate, he cited the example of Nova Scotia, where the Minister of Indian and Northern Affairs had funded a programme to revitalize Indian arts and crafts. Another programme to train around 20 Indian entrepreneurs and to provide them with capital to finance their business ventures had just been initiated. Furthermore, an Indian Development Corporation, which granted loans to Nova Scotia Indians wishing to set up businesses, had been established and provided with capital of $4 million.

58. Those were only a few of the mechanisms which had been introduced in Nova Scotia. There were many others throughout the country. The millions of dollars invested in them should generate economic development.

59. There was also major investment in education. Over $100 million was invested annually in higher education, in order to ensure rapid development of the human resources. Whereas fewer than 60 Indians had been in higher in 1960, there had been more than 13,000 during the 1986-1987 academic year. Progress was undeniable.

60. Finally, with regard to the jurisdiction of the Human Rights Commission or the Ombudsman of Nova Scotia, he specified that those bodies would be able to deal with cases between Indians and the provincial government or private employers or providers of services. However, they could not deal with cases concerning Indians living on reserves, as they were a matter for the federal Government. Federal bodies could intervene where appropriate.

61. Mr. Alvarez Vita took the Chair.

62. The CHAIRMAN invited the members of the Committee to make comments.

63. Mr. SPARSIS said that, as he had understood it, the right to strike was denied in Canada only when a strike would deprive the population of essential services, or might lead to a national disaster or damage the national interest. However, paragraph 202 of Canada's report stated that under the Industrial Relations Act, strikes and lock-outs were prohibited when a collective agreement was in operation.

64. Furthermore, with regard to job security, the legislation stipulated that the employer must give notice of dismissal or make a redundancy payment, but it only guaranteed the right to employment for workers with more than 10 years' service. That 10-year period seemed excessively long. In addition, it would be useful to know whether that referred to 10 years' employment in a job or in a company. It would also be interesting to know the attitude of the courts and how they interpreted those provisions.

65. With regard to equality of remuneration, he wished to know whether, as was the case in the United States where more than 100,000 such cases were pending before the courts, evaluations for jobs which were supposed to be remunerated equally gave rise to many disputes between trade unions and employers in Canada.

66. Lastly, he observed that the Canada Labour Code on occupational safety and hygiene was an example for both developed and developing countries to follow.

67. The CHAIRMAN recalled that, at the current stage of the Committee's work, it was no longer the time to ask questions, and members should confine themselves to making comments.

68. Mrs. CARON (Canada) briefly replied to the questions raised by Mr. Sparsis by saying that, with regard to exercise of the right to strike during a period covered by a collective agreement, it was quite logical that employers and trade unions who had concluded a collective agreement should undertake to resort to neither a strike nor a lock-out while the agreement was in operation. The provisions of the Industrial Relations Act mentioned by Mr. Sparsis were not therefore an infringement of the right to strike. They merely placed certain conditions on the exercise of that right in order to avoid anarchy.

69. Turning to job security, she said that the concept of arbitrary dismissal had recently emerged in labour legislation, but it was not new. It had always been possible for persons who considered that they had been improperly dismissed to appeal to the courts, which might award them compensation.

70. With regard to the 10 years' service required to guarantee the right to employment, she believed that to refer to 10 years in the same company. Further information on that point would be given in the next report. The question of whether that 10-year period was too long was one which could only be decided by policy-makers.

71. In most provinces, the Human Rights Commission was responsible for investigating complaints relating to equality of remuneration and making decisions. A relatively large number of cases were currently pending at both federal and provincial levels. Greater detail as to the number and nature of those cases would be given in the subsequent report.

72. Mr. ALSTON said that the Canadian Government had admirably fulfilled the basic obligation incumbent on all States parties to the Covenant, namely ensuring application of the Covenant's provisions on its territory and making a report on that matter to the Committee in all good faith. He warmly thanked the Canadian delegation for giving detailed replies to all the questions that had been asked, particularly those concerning the indigenous populations, and for kindly conveying to the Committee documents from non-governmental sources. His only regret was that the Canadian Government continued to believe that self-determination necessarily implied geographical separation. He believed that to be an anachronistic notion of self-determination.

73. Finally, he said that he considered the mandatory retirement age to be a most interesting question on which the Committee might formulate general comments.

74. The CHAIRMAN, speaking in his personal capacity, said that he would read the documentation submitted to the Committee by the Canadian delegation with great interest.

75. Speaking in his capacity as Chairman, he thanked the Canadian delegation, which had provided very detailed information on varied and sometimes extremely complex issues and had endeavoured to give satisfactory replies to most of the questions raised, thereby demonstrating the willingness of its Government to co-operate actively in the Committee's work.

76. Consideration of the report of Canada was thus completed.

77. Mr. de Montigny Marchand, Mrs. Caron, Mrs. [illegible]Comeau, Mr. Lafleur and Mr. Low (Canada) withdrew.

Rwanda (E/1982/3/Add.42) (continued)

78. The CHAIRMAN announced that the Committee would resume consideration of the initial report of Rwanda concerning rights covered by articles 13-15 of the Covenant (E/1982/3/Add.42).

79. At the invitation of the Chairman, Mr. Kabagema (Rwanda) took a place at the Committee table.

80. Mr. KABAGEMA (Rwanda), in reply to the question on the teaching of human rights in the Rwandese education system, said that the subject was studied at all educational levels (primary, primary continuation, secondary and higher).

UNITED NATIONS

ANNEX 6

E

Economic and Social Council

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E/1989/L.9
21 March 1989

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First regular session of 1989
Item 9 (a) of the provisional agenda */

HUMAN RIGHTS QUESTIONS: INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Report of the Committee on Economic, Social and Cultural Rights on its third session **/

ABSTRACT: CANADA

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*/ E/1989/30.

**/ The present report is being issued in a preliminary unedited version. The final report will be issued as Official Records of the Economic and Social Council, 1989, Supplement No. 4 (E/1989/22-E/C.12/1989/5).

GE.89-15970/0393B/0400B

89-09342

77. He pointed out that disparity in health care between urban and rural centres existed in most countries, however, all doctors, in the urban centres as well as those in rural centres, had the same qualifications, and that accessibility to health care in the rural areas depended to a greater extent on communication network.

Concluding observations

78. In concluding consideration of the report, the Chairman and several members of the Committee thanked the representative of Cameroon for having answered some of the questions raised by the members of the Committee and for having contributed to establishing a constructive dialogue with the Committee. The view was expressed that future reports of Cameroon should take into account the questions raised and should also provide statistical data so as to enable the Committee to determine the trend and progress made in the enjoyment of these rights. It was observed that the report emphasized the legal aspects of the implementation of the rights of the Covenant rather than the factual aspects.

Canada (arts. 6-9)

79. The Committee considered the second periodic report of Canada on the rights referred to in articles 6-9 of the Covenant (E/1984/7/Add.28) at its 8th and 11th meetings on 10 and 13 February 1989 (E/C.12/1989/SR.8 and 11).

80. Introducing this report, the representative of the State party said that Canada was a federal country comprising 10 provinces and 2 territories, the respective powers of the central Government and the governments of the provinces being defined in the Canadian Constitution Act, while those of the territories were conferred by legislation. Although it was for the central Government to ratify international treaties, direct responsibility for their implementation lay with the provincial governments and the governments of the territories, which were required to account for the measures they had adopted.

81. In the case of reports prepared under various international human rights instruments, he said that they were widely disseminated in Canada with the express aim of encouraging Canadians to familiarize themselves with the measures adopted and to gain a better understanding of the responsibilities entered into by their Government.

82. He emphasized the importance of the Canadian Charter of Rights and Freedoms and of its provisions on rights to equality; the Charter had entered into force in 1985 and had led to the amendment of several laws and the annulment by the courts of many provisions held to be at variance with it. Furthermore, the courts frequently referred to the provisions of the Covenant in interpreting the relevant provisions of the Charter.

83. Referring to new developments in Canada since the report had been drafted, he stated that the Province of Ontario had adopted legislation on equality of remuneration, that other provinces had adopted legislative

provisions concerning equal pay for equal work, and that the protection accorded to workers as regards occupational safety and health had been considerably increased in Nova Scotia. Despite regional disparities, the unemployment rate had continued to decline in all regions (from 9.4 per cent in December 1986 to 7.6 per cent in December 1988). In particular, the unemployment rate for women and young people had fallen steadily in recent years and, in December 1988, had stood at 9.6 per cent in the case of adult women and 11.9 per cent in the case of young people.

84. Lastly, referring to the work of the federal, provincial and territorial commissions on the rights of individuals, which administered legislation on those rights, and to their courts of inquiry, he stated that they were constantly confronted with new situations that obliged them to find solutions for which there were no precedents. Thus, the subjects taken up included problems relating to AIDS virus detection tests, the use of drugs at work and employment opportunities for disabled persons.

General matters

85. The Committee took note with appreciation of the report submitted by the Government of Canada and commended the representatives of the State party on its presentation. It was, however, generally felt that the report was too legalistic and did not contain sufficient information on the practical implementation of the rights set forth in articles 6 to 9 of the Covenant.

86. With regard to the general framework within which the Covenant is implemented, members of the Committee inquired whether the division of powers between the Federation and the Provinces had led to any significant disparities in the enjoyment of the rights set forth in articles 6 to 9 of the Covenant by citizens of the different provinces, whether there were any possible adverse consequences for the enjoyment of these rights flowing from the entry into force of the Canada-United States of America Free Trade Act, and whether any consideration had been given to the inclusion of economic and social rights in the Canadian Charter of Rights and Freedoms. Further information was sought concerning the measures adopted by the Government pursuant to its responses to the report mentioned in paragraph 12 of the report entitled "Toward Equality", and on the meaning of the sentence in paragraph 6 of the report concerning paragraph 6 (2) (b) of the Constitution.

87. In addition, members wished to know whether there was a constitutional court to settle disputes arising between the central Government and a province, and what the constitutional differences were between the provinces and territories. Further information was sought concerning the justiciability of social and cultural rights, and any measures taken by the Government to disseminate information concerning the Covenant, including the role of non-governmental organizations in such endeavours and in the elaboration of the report. They also wished to receive further information on the Canadian jurisprudence regarding economic, social and cultural rights, in particular in respect of the new legislation on sexual harassment in Quebec, and inquired what steps had been taken to combat indirect discrimination against women.

88. Referring to the situation of the most vulnerable and disadvantaged groups, they wished to know what specific measures had been taken to provide a minimum income for everyone, including the long-term unemployed, in which respect the rights of foreigners and refugees were restricted as compared with those of citizens, whether specific legislation applied to the many immigrants who came to Canada to find work, and what was the meaning of the term "visible minority" used in the report.

89. With regard to the indigenous population in Canada, in particular the Mikmaq Indians in Nova Scotia, it was asked how article 1 of the Covenant was implemented in practice, whether amendment to the Indian Act had already been enacted following negotiation between the Government and Indian minorities, whether the Mikmaq Indians had sought the intervention of the Ombudsman in their case, and what was the current status of treaties between the Government and indigenous populations. Further information was also requested concerning the unemployment rate among Mikmaq Indians, the Native Economic Development Program, and the Government's view on its dispute with the Mikmaq Indians regarding the administration of their territory. Lastly some members wished to know what the position of the Government was with regard to the information contained in document E/C.12/1989/NGO/1.

90. Lastly, the observer of ILO informed the Committee about the ratification and application by Canada of the relevant ILO Conventions.

91. Replying to questions asked by members of the Committee, the representative of the State party referred to the distribution of powers between the federal Government and the provincial governments, and emphasized that federalism was not a source of any appreciable disparities as regards observance of the rights provided for in the Covenant. Where necessary, provincial programmes for the protection of a particular right were financed to a large extent by federal credits so as to ensure uniform protection throughout Canadian territory. Furthermore, pensions paid under the Canadian pension plan were standardized and payable irrespective of place of residence in Canada. On the other hand, in the case of other rights, such as those guaranteed by article 7 of the Covenant, for whose enjoyment the financial aspect was of lesser importance, the various governments enjoyed a certain independence in adopting the necessary legislative and administrative measures. So as to ensure co-ordination of provincial and territorial human-rights policies and to resolve any conflicts that might occur, ministerial conferences on the subject were held regularly and a committee on governmental action at the national level met twice a year. Moreover, courts before which disputes had been brought by private individuals or a provincial government, or by the federal Government for an advisory opinion, were also empowered to resolve disputes between the federal and provincial authorities. As to the difference in status between the provinces and the territories, he pointed out that in practice both types of entity had the same legislative and executive powers. The constitutions of the territories, unlike those of the provinces, were enunciated in federal legislation. Nevertheless, it seemed unlikely that there could be any amendment to that legislation which had not been endorsed by the territorial government in question.

92. Referring to the free trade agreement recently signed by Canada and the United States, he expressed his conviction that it would lead to an expansion of the Canadian economy and an increase in job creation. It did not limit the capacities of governments in Canada to develop and strengthen social programmes and, moreover, federal and provincial labour legislation was not covered by the agreement.

93. Replying to other questions, he said that certain economic and social rights were already enunciated in the Canadian Charter of Rights and Freedoms, such as the right to work in the place of one's choice and freedom of association. As regards the inclusion of other rights, Parliament had considered that it was preferable to leave it to the competent legislative bodies to settle complex questions requiring solutions geared to a constantly changing economic and social situation. Nevertheless, several provincial laws, including the Quebec Charter of Rights and Freedoms of the Individual and the Saskatchewan Human Rights Code, unequivocally guaranteed several of those rights. As regards governmental initiatives to give effect to the policy for the promotion of equality, he highlighted various measures already taken concerning the statutory age of retirement, the access of women to certain posts in the Canadian army and social benefits intended for part-time workers. As to article 6 of the Canadian Charter, he stated that the provisions of that article enabled a province to establish preferential employment programmes for residents of that province if provincial employment rates were below the national average.

94. He reminded the Committee that international treaties did not, in Canada, automatically have force of law, but they must be the subject of legislative measures incorporating them within Canadian law. Nevertheless, the Canadian courts frequently referred to them in interpreting the Canadian Charter of Rights and Freedoms, as was apparent from a recent decision by the Canadian Supreme Court on certain trade union rights, a decision which had very clearly been based on the Covenant. In that connection, he admitted that the report had not given sufficient information describing the progress made and jurisprudence relating to articles 6 to 9 of the Covenant. He pointed out, however, that jurisprudence relating to those rights had, in many cases, been so recent and tentative that it was very difficult to refer to it. Responsibility for drafting the reports submitted by Canada lay with the country's 13 governments. After being prepared, they were circulated to non-governmental organizations, which had an opportunity of submitting their comments to the Government.

95. Referring to other questions, he described the various legislative measures and jurisprudence relating thereto prohibiting sexual harassment at work. The Canadian Supreme Court had recently held that employers were indirectly responsible for any sexual harassment in their undertaking. It was therefore incumbent on them to take any measure contributing to deterrence, prevention or information on that prosecutable act and the proceedings to which it might give rise. Trade unions and employers had endeavoured to eliminate such behaviour and, in some cases, offenders had been dismissed. He also drew attention to the various codes relating to human rights and Canadian

law on the rights of individuals, which protected the citizen against any form of racial discrimination. He further emphasized that lawful immigrants or permanent residents were entitled to equal treatment with Canadian citizens as regards the implementation of articles 6 to 9 of the Covenant.

96. Referring to the numerous questions asked about Canada's aboriginal populations, he emphasized the complexity of the problem, and explained that the situation of those populations varied widely. Thus, in the case of Indians alone, there were in Canada more than 590 groups with very different languages and cultures. Although some Indians enjoyed a more than satisfactory standard of living, quite clearly the economic and social situation of far too many aboriginals was deplorable. The Canadian Government was endeavouring to respond constructively, equitably and effectively to their needs and aspirations by making the necessary changes. Thus, legislation relating to the Indians had been appreciably revised, in particular as regards the retention of Indian status by women who married non-Indians. The laws relating to the Cree Naskapi in Quebec and the Sechelt Indians bore witness to the Government's desire to grant greater autonomy to Indian groups. Generally speaking, self-determination was a recognized right of the Canadian people as a whole, but it could not allow action liable to jeopardize Canada's territorial integrity or political unity. He informed the Committee that the Government had made 19,000 hectares of land available to some 14,000 Mikmaqs. In addition, it was continuing its policy of granting them greater responsibility for the management of their own affairs. Programmes were thus being financed with the aim of reviving Indian art and handicrafts, training Indian heads of undertakings and granting loans to persons wishing to set up a company.

Article 6: Right to work

97. In connection with that issue, members of the Committee wished to know which steps had been taken by the Government to promote realization of the right to work by everyone and to ensure the equal rights of men and women in the enjoyment of this right, how the Government reconciled the increase in unemployment rates from 6 per cent to 14 per cent with its obligations under article 6 of the Covenant, why the unemployment rate was so high among women, young people and ethnic groups and what measures were envisaged to reduce it, and how programmes for vocational guidance and training were financed. Further information was requested on the 1982 National Training Act, on any integrated national plan aimed at the rehabilitation of the unemployed in useful and productive employment and the balancing of supply and demand in the labour market, and on the protection provided for job security, in particular, with regard to compensation for dismissals, re-instatement in the case of unjustifiable dismissals, the role of industrial courts in such matters and the promptness of adjudication in relevant cases. In this connection the view was expressed that the 10-year period after which, in the event of dismissal, workers had a guaranteed right to work was too long.

98. Additionally, members referred to the legislation on the abolition of compulsory retirement and inquired how long people normally worked in Canada,

whether the legislation had had any adverse effects on the unemployment rate, whether persons working after the age of 65 received the same pension as those who had retired at that age, whether receipt of an old age pension was compatible with continuance at work, whether any measures had been taken to provide special work for elderly persons who could no longer work normally, and how pension funds were administered. Further information was also sought on the implementation of the right to equal access to work for men and women.

99. Replying to the points raised, the representative of the State Party indicated that the unemployment rate had been declining steadily for several years and that the number of jobs created had been increasing steadily. Following consultations with the provinces, business circles and the trade unions, the federal Government had adopted in 1985 a Canadian employment strategy. This comprised six major programmes, the aims of which included better adaptation of workers to the development of technology and changes in the labour market, better access to employment for disadvantaged groups, including the long-term unemployed, encouragement of training in specialized fields and promotion of innovative approaches to the changing labour market. In 1988-1989, funds totalling $1.6 billion had been allocated for this strategy. Discrimination in employment or in working conditions was prohibited by law and, additionally, the Federal Employment Equity Act imposed on employers an obligation to seek to employ women, native people, members of visible minorities, and handicapped persons, by eliminating systemic obstacles and adopting programmes of action. The fact that the unemployment rate for adult females had been slightly lower than that for adult males since 1983 was due to the lower participation of women in seasonal industries in certain areas, or to their concentration in certain sectors which had been more seriously affected by economic fluctuations. A feature of the participation of young people in the economically active population was the marked fluctuation between study, part-time work and seasonal work. The employment situation of the Mikmaq Indians was unsatisfactory and special measures had been taken to put an end to their economic dependence.

100. Referring to the measures taken to ensure job security, the representative drew attention to various laws providing for reasonable notice or the payment of a termination allowance in the event of dismissals. The notice could be dispensed with in certain circumstances and in the case of fixed-term contracts. Expeditious and inexpensive appeal procedures were available to workers and they were protected against abusive dismissal. Furthermore, both the Canada Labour Code and the Codes of Nova Scotia and Quebec dealt with the question of unfair dismissal by establishing an actual right to employment in such cases, subject to seniority in employment, ranging from 1 to 10 years according to the different codes. The question of reduction of the 10-year period could be settled only by the political authorities concerned.

101. In connection with Canada's policy regarding a statutory retirement age, the representative referred to the general ageing of the population. He also pointed out that mandatory retirement at a particular age might present problems under article 15 of the Canadian Charter of Rights and Freedoms,

which prohibited discrimination based on age. In that connection, he mentioned certain judicial decisions and said that the Government was determined to abolish any provisions establishing a specific age for retirement. An experiment carried out in Quebec since 1986 had shown that such a policy had no effect on employment: most workers were still retiring at the customary age. Compulsory retirement had thus been eliminated in the Federal Civil Service and amendment of the Canadian legislation on the rights of the individual was envisaged. Replying to another question, the representative said that the contributions paid by wage-earners and employers to the Canadian pension fund were deposited in a special account and did not become part of the public revenue.

Article 7: Right to just and favourable conditions of work

102. With reference to that issue, members of the Committee wished to know what methods were used in Canada for the determination of salaries and wages, whether there were any prior consultations with employers and unions before the Government issued minimum wages-orders, and whether there were benchmarks for safety and health which had been nationally agreed among social partners. Further information was sought on any specialized and professional inspectorate responsible for the enforcement of standards relating to safe and healthy working conditions. Furthermore, it was asked what was the present state of jurisprudence in respect of legislation in this area, whether there were severe penalties for infringing such legislation, especially when occupational accidents resulted in death, and whether such legislation had to be enacted at the province as well as the Federal level.

103. In addition, members wished to receive further information on the practical implementation of the right to equal remuneration for men and women, and on the equal opportunities legislation. They further inquired what was the percentage of senior women civil servants and managers, and whether Quebec had any plans for reducing the number of civil servants. It was also asked whether it was intended gradually to reduce the maximum working day and the maximum working week, in particular in the Northwest Territories, and why maternity leave was not remunerated in Canada.

104. Replying to the questions asked by members of the Committee, the representative said that the law guaranteed a minimum wage the amount of which was reviewed and increased periodically by orders made following consultation between the employers and the trade unions. The minimum wage constituted a floor and wage-earners or their trade unions could negotiate a higher minimum wage with their employers. In 1987 female workers' wages amounted to 65.9 per cent of those of male workers, compared with 58.4 per cent 10 years earlier. Various laws prohibited discrimination between men and women in the matter of working conditions. However, while the legislation providing for equal pay for equal work presented no difficulty of implementation, the same was not true of legislation providing for equal pay for work of equal value, where complex criteria were involved. Equity in the matter of pay was designed to prevent certain categories of employment where women predominated being less well paid than other categories where male workers predominated,

for work of equal or comparable value. The provincial commissions on human rights had mostly to concern themselves with the many complaints received on this subject.

105. Referring to the questions asked concerning workers' safety and health, the representative said that the competent inspection services generally included doctors, engineers and specially trained technicians. Throughout the country, moreover, there was now a tendency towards promotion of co-operation in this field between employers and wage-earners through establishment of joint safety and health committees. Regarding the establishment of safety and health standards, the representative drew particular attention to the WHIMS system whose purpose was to develop uniform criteria for the production, import and use at workplaces of dangerous substances. This system, instituted in 1987, had been developed following intensive consultations between all the social sectors concerned. Infringement of the regulations on the health of workers and industrial hygiene could entail the imposition of a fine which, at the federal level, could amount to $100,000 in the case of serious offences. The fine could also be accompanied by a prison sentence. However, most disputes in this area were settled at the level of the government departments concerned.

106. Replying to other questions, the representative explained that the policy of reducing the number of civil servants in Quebec was part of a rationalization effort aimed at making the administration more efficient. Several State enterprises had been privatized and certain entities forming part of the civil service had been reorganized. The normal average duration of work in Canada was 8 hours per day and 40 to 48 hours per week, work exceeding the normal duration and up to the legal maximum being paid at overtime rates. In the Northwest Territories where the period of daylight was very long in summer, and where most of the work was done during that season, both the workers and the employers had expressed a desire for a maximum working day of 10 hours and a maximum working week of 54 hours, as that would make it possible for workers to stay a shorter time away from their families.

107. The representative also explained that the federal Government's unemployment insurance scheme provided for 15 weeks of maternity leave. In the event of the death of a mother, it was possible for the father to take paternity leave on health grounds in order to care for his child. Furthermore, employers were prohibited from dismissing a female wage-earner during her maternity leave.

Article 8: Trade Union Rights

108. With regard to that issue, members of the Committee wished to receive further information on the application of the legal provision according to which unions should not act in a manner that was arbitrary, discriminatory or in bad faith, on whether this provision did not vest excessive discretionary power to the Minister of Labour, on whether this provision was compatible with the rights set forth in article 9 of the Covenant, and on any court cases in this matter. Additional information was also requested on collective

bargaining and on whether there was a balance of power between unions and employers and on the role of the State in collective bargaining. Clarification was also sought of the compatibility of the prohibition of strikes in disputes concerning collective agreements with ILO Conventions Nos. 87, 98 and 151. In particular, clarification was requested concerning the application of the industrial relations legislation under which strikes and lockouts were prohibited when a collective contract was in force. Furthermore, members wished to receive further information on trends in the membership of trade unions over the past six years.

109. In reply, the representative of the State party said that the obligation to ensure equitable representation was designed to protect the wage-earners affected by a collective contract by obliging the trade unions to ensure representation of all the wage-earners affected, in an equitable and non-discriminatory fashion. In his view, this provision was entirely consistent with the rights enunciated in article 8 of the Covenant. Any dispute in this area was dealt with by the Canadian labour relations council, a body composed of trade union and employers' representatives. The legislation governing collective negotiations was designed to support efforts made by the social partners to maintain constructive relations and prevent unfair practices. It was thus quite logical that where trade unions and employers had concluded a collective contract they should undertake not to resort to strikes or lockouts while the contract was in force. The rate of trade union membership had declined from 40 per cent in 1983 to 37.6 per cent in 1987 owing to the rapid growth of new jobs since 1983. The representative also explained that the limitations on the right to strike imposed in essential services or in the event of a national crisis endangering the population as a result of a strike was in conformity with the ILO principles and conventions on freedom of association. In certain cases, however, the ILO Committee on Freedom of Association or the Committee of Experts had made suggestions and recommendations. In this connection, the representative pointed out that Canada had always co-operated with those monitoring bodies by furnishing requested information in due time.

Article 9: Right to social security

110. In this respect, members of the Committee wished to receive further information regarding the level of unemployment benefits as compared with wages, and the consequences of the exhaustion of an individual's entitlement to unemployment benefits. It was also inquired whether university and high school graduates were entitled to any benefits before they could find their first employment. Additionally, members wished to receive further information on the benefits available to women workers, and on Canada's attitude toward international co-operation and its contributions to international funds. It was also asked why Canadian public expenditure on social security benefits seemed to be lower than in other comparable countries, whether foreign workers involved in industrial accidents were entitled to social security benefits or whether they could be deported, and whether, if a mother died, the father was entitled to leave of absence when his child fell sick.

111. Replying to these questions, the representative of the State party said that the unemployment benefit amounted to 60 per cent of the average wage received during the period of employment, up to a maximum of $383 per week. At the end of the period of payment of the allowance, the recipient could apply for assistance to the province or to the local authority concerned. Secondary school or university graduates could likewise apply to the local authority for help when seeking initial employment. Referring to bilateral agreements on social security, the representative said that ILO sought to encourage its members to conclude such arrangements in order to eliminate obstacles to the movement of workers and to ensure greater justice in the area of social security. In that area, the Canadian Government encouraged the conclusion of bilateral agreements.

Concluding observations

112. In concluding consideration of the report, members of the Committee renewed their thanks to the delegation for having responded in considerable detail to many of the questions posed. By the same token, it was noted that while it may be especially burdensome for federal States to discharge their reporting obligations adequately with respect to each of the constituent provinces and territories it was nevertheless important that details of difficulties encountered and of the extent of non-realization of the relevant rights be included in the report. It was said, however, that parts of the Canadian report had consisted largely of a recitation of relevant legislative provisions and that this did not enable the Committee to draw any detailed conclusions as to the State party's compliance with the Covenant.

Tunisia (articles 10 to 12)

113. The initial report of Tunisia concerning the rights covered by articles 10 to 12 of the Covenant (E/1986/3/Add.9), was considered by the Committee at its 9th meeting held on 10 February 1989 (E/C.12/1989/SR.9).

114. The report was introduced by the representative of the State Party who highlighted some of the significant changes which had taken place since the change in the leadership of his country on 7 November 1987. Among the initial measures taken were a review of the Press Code, the authorization of activities by political parties, the abolition of the emergency courts and the freeing of political prisoners. The Constitution had also been revised so as to permit the normal functioning of democratic institutions, and legislative and presidential elections were planned. Furthermore, a more healthy social climate had been created in order to make possible the free exercise of trade-union rights.

General matters

115. With regard to the general framework within which the Covenant is implemented, members of the Committee wished to receive information on any significant changes which had occurred since the preparation of the report. Clarification was requested as to the meaning of the sentence in page 1 of the